

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

VOXER, INC. and VOXER IP LLC,)	AU:20-CV-00655-LY
)	
Plaintiffs,)	
)	
v.)	AUSTIN, TEXAS
)	
META PLATFORMS, INC., f/k/a)	
FACEBOOK, INC., and INSTAGRAM LLC,)	
)	
Defendants.)	SEPTEMBER 12, 2022

TRANSCRIPT OF JURY TRIAL

VOLUME 1

BEFORE THE HONORABLE LEE YEAKEL

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Proceedings recorded by computerized stenography, transcript
produced by computer.

13:01:45 1 (Open court, no jury)

13:01:45 2 THE COURT: We're here because I understand there's a
13:01:47 3 matter we need to take up before we start selecting the jury in
13:01:53 4 Cause Number 20-CV-655, *Voxer and others v. Meta Platforms and*
13:02:01 5 *others.*

13:02:02 6 So who wants to proceed with where we are today?

13:02:04 7 MR. POWELL: Good morning, Your Honor. Mike Powell
13:02:06 8 for the plaintiff, Voxer. The plaintiff does have one issue it
13:02:09 9 would like to raise regarding the limine rulings. The Court
13:02:13 10 advised that the parties, in this case, Voxer, should request
13:02:17 11 leave before seeking to use certain evidence in the case. That
13:02:22 12 evidence that we're interested in does come up in the opening
13:02:26 13 statement and with some early witnesses. So we're hoping the
13:02:30 14 Court will indulge hearing our argument to request leave to
13:02:33 15 introduce that evidence.

13:02:34 16 THE COURT: As long as it's short.

13:02:36 17 MR. POWELL: It will be. With the Court's
13:02:39 18 permission, I do have some PowerPoint slides that I think will
13:02:40 19 help illustrate the issues. I can hand up --

13:02:43 20 THE COURT: That doesn't lead to short.

13:02:48 21 MR. POWELL: I think it's only four or five slides,
13:02:50 22 just to present the evidence so you can see what we're talking
13:02:53 23 about.

13:02:54 24 THE COURT: Pass them up.

13:03:03 25 MR. POWELL: And I don't know if the electronic

13:03:05 1 system is live. But if we could pull up the first slide, I'm
13:03:08 2 just going to compare quickly, Your Honor, Motion in Limine
13:03:11 3 Number 3, which you granted, and Motion in Limine Number 4,
13:03:15 4 which was withdrawn by the defense.

13:03:18 5 In both motions the subject matter that the defense
13:03:24 6 was concerned with is, I think, the same. In both instances
13:03:28 7 they were worried about an e-mail from Mark Zuckerberg dated
13:03:33 8 March 2012 which advocated for copying competitor technology
13:03:38 9 such as Voxer.

13:03:39 10 Voxer is actually mentioned in that e-mail, and it
13:03:42 11 relates to Mr. Zuckerberg's trip to China, where he was
13:03:45 12 impressed by their ability to copy other people's technology
13:03:49 13 and quickly bring it to market. And the -- the reference was
13:03:53 14 to Voxer because two Chinese companies had done just that and
13:03:57 15 were having great success in the market in Asia because of it.

13:04:01 16 The second category is about completion, whether the
13:04:07 17 parties are competitors and whether Facebook's actions in
13:04:10 18 cutting off Voxer from what's called its Friends API,
13:04:14 19 Application Programming Interface, is a fact that the jury
13:04:17 20 should hear in this case.

13:04:18 21 In Motion in Limine Number 3, the purported reason to
13:04:22 22 exclude was, quote, Voxer's conduct in this litigation to date
13:04:27 23 has made clear that it intends to try to piggyback on negative
13:04:32 24 publicity directed to Facebook in recent years and turn this
13:04:35 25 patent infringement matter into a de facto referendum on

13:04:38 1 Facebook's corporate citizenship.

13:04:39 2 In Motion in Limine Number 4 we're going to find the
13:04:42 3 same evidence being presented, or they're attempting to
13:04:47 4 exclude. The difference here -- the only difference here is
13:04:49 5 that, as to that competitor category, they limited that motion
13:04:53 6 to just matters in 2012.

13:04:56 7 Now, they did that, importantly, because the decision
13:04:59 8 to cut Voxer off from the Friends API happened in January of
13:05:05 9 2013. And actually happened as a culmination of the
13:05:08 10 discussions that Voxer and Facebook were having about whether
13:05:11 11 they were going to acquire Voxer, license its technology,
13:05:15 12 whether they were or were not competitors.

13:05:17 13 At some point in that process in early 2013, Facebook
13:05:21 14 decides you are a competitor; we're going to cut you off. And
13:05:25 15 the contention by Voxer is that activity led to Voxer's
13:05:29 16 ultimate financial demise.

13:05:31 17 The reason here in MIL Number 4, they again accuse us
13:05:34 18 of seeking to capitalize on negative publicity directed to
13:05:38 19 Facebook.

13:05:39 20 The point, Your Honor, is we're not trying to bring
13:05:41 21 in Facebook's misdeeds globally. There may be several
13:05:46 22 perceived misdeeds that have nothing to do with this case. The
13:05:48 23 misdeeds that we're interested in are specifically tied to
13:05:50 24 Voxer. The Mark Zuckerberg e-mail involves Voxer's technology
13:05:55 25 being copied in China and Mark Zuckerberg saying that sounds

13:05:58 1 like a good idea.

13:05:59 2 The other e-mails and internal communications relate
13:06:03 3 to whether or not Voxer is a competitor and Facebook's decision
13:06:07 4 to cut them off from a very important interface that was a
13:06:10 5 third of Voxer's business in 2013.

13:06:12 6 Now, tying it to the case, slide 4, this is
13:06:17 7 Cathy Lawton. This is the expert report for the defense.
13:06:21 8 She's going to offer the opinion that I've highlighted here.
13:06:24 9 Voxer had a history of failing to meet its projections.
13:06:28 10 Voxer's financial condition indicates that the form of the
13:06:31 11 license agreement would be a lump sum. And she talks about the
13:06:35 12 lackluster financial performance leading up to the hypothetical
13:06:39 13 negotiation, Your Honor, which in this case is November of
13:06:42 14 2018.

13:06:44 15 All of this conduct leads into the hypothetical
13:06:47 16 negotiation that the real reason Voxer's financial condition
13:06:51 17 suffered is Facebook stepped in and cut it off from the Friends
13:06:54 18 Application Programming Interface, which tubed its business.

13:06:58 19 The next slide will show how this same information,
13:07:03 20 facts, and evidence is relevant to the issue of willful
13:07:06 21 infringement. This excerpt is from Voxer's opposition to the
13:07:11 22 motion for summary judgment on willfulness which, as Your Honor
13:07:14 23 knows, the defendants withdrew. They withdrew it because they
13:07:18 24 knew there was a triable issue of fact based on the exact
13:07:22 25 evidence they now seek to exclude. We argued in that

13:07:26 1 opposition Facebook determined that Voxer app was a competing
13:07:29 2 social network and restricted the Voxer app's access to
13:07:32 3 Facebook Friends API. That's bad-faith conduct and shows an
13:07:37 4 intent to harm Voxer.

13:07:38 5 We know from Ms. Lawton's expert report, if we can go
13:07:43 6 to the second cite. I think it's page 6 -- no. It is
13:07:50 7 page 615. This isn't in the slide deck, Your Honor, but here's
13:07:56 8 another opinion from Ms. Lawton: Quote, Voxer and Facebook are
13:08:00 9 not competitors, end quote.

13:08:01 10 She intends to argue to the jury that they're not
13:08:05 11 competitors, whereas the documents that we seek to use and
13:08:08 12 profile in the opening say the exact opposite. They say that
13:08:11 13 Mark Zuckerberg and his senior executives discussed ad nauseam
13:08:17 14 Voxer's business and came to the exact opposite conclusion.
13:08:20 15 They said they are competitive and we must harm their business.
13:08:23 16 Otherwise, it's a problem for us going forward.

13:08:25 17 That information is necessary to explain the entire
13:08:28 18 commercial relationship between Voxer and Facebook that will
13:08:32 19 inform the *Georgia-Pacific* Factor analysis that goes into the
13:08:36 20 hypothetical negotiation.

13:08:37 21 Thank you, Your Honor.

13:08:42 22 MR. VAN NEST: Good afternoon, Your Honor.

13:08:44 23 Bob Van Nest for Meta.

13:08:47 24 Your Honor granted Motion in Limine 3, which was
13:08:50 25 directed to keeping out evidence of Facebook's decision in 2013

13:08:56 1 to prevent Voxer from using the Friends API platform. And
13:09:00 2 there's a good reason for that.

13:09:02 3 This evidence is essentially an unpled antitrust
13:09:06 4 claim lobbed into the middle of a patent case. It has nothing
13:09:10 5 to do with patent infringement. It happened in 2013, five
13:09:14 6 years before the patents issued. It doesn't have anything to
13:09:18 7 do with the patents. They hadn't even been applied for. It
13:09:22 8 involves a different Facebook product than the accused product,
13:09:25 9 which is Facebook Live. It involves Voxer's walkie-talkie app,
13:09:31 10 which is a voice app, not video.

13:09:35 11 And in a patent case, the but-for world we look to is
13:09:39 12 a world in which there was no patent infringement. This has
13:09:42 13 nothing do with that. And, as we said in our motion,
13:09:45 14 Your Honor, it's highly prejudicial. They do want to tap into
13:09:48 15 whatever feelings people have about social networking companies
13:09:52 16 like Facebook, and they want to present Facebook as a bully
13:09:58 17 that kicked them off.

13:10:00 18 Now, this happened in 2013. They could have filed a
13:10:03 19 claim then, but they didn't. They could have filed a claim as
13:10:06 20 part of this case, but they didn't. This evidence has nothing
13:10:08 21 to do with any issue the jury is going to be hearing. And
13:10:13 22 that's why I think Your Honor granted the motion in the first
13:10:15 23 place, and that's what should pertain.

13:10:17 24 They want to turn this case into sort of a referendum
13:10:20 25 or the corporate conduct of Facebook, which is going to amount

13:10:24 1 of a real free-for-all.

13:10:26 2 Now, as to these opinions by Ms. Lawton and others,
13:10:29 3 none of those opinions have been expressed yet. I obviously
13:10:33 4 understand that, if we open the door to something, then
13:10:35 5 Your Honor may revisit this. But, as the case stands now, it's
13:10:39 6 a patent infringement case where they're alleging infringement
13:10:43 7 of two patents that didn't issue until 2018 and 2019 and in
13:10:48 8 which the conduct of Facebook or the conduct of Voxer back in
13:10:52 9 2013 has absolutely nothing to do with it.

13:10:54 10 So that's the -- that was the basis for the motion.
13:10:59 11 I assume that was the basis for Your Honor's ruling. But, in
13:11:02 12 any event, it's correct that if we start to allow this type of
13:11:06 13 thing, we're going to have a free-for-all on our hands where
13:11:09 14 we're talking about conduct that just has nothing whatsoever to
13:11:13 15 do with patent infringement or patent damages or willfulness.

13:11:17 16 Willfulness in a patent case, as Your Honor is well
13:11:20 17 aware, depends on knowing about the patents and willfully
13:11:23 18 infringing them. These patents didn't even issue until five
13:11:27 19 years after 2013 and 2018. They weren't even applied for until
13:11:32 20 Facebook Live was on the market. They weren't applied for
13:11:35 21 until four years after these events that counsel is talking
13:11:38 22 about.

13:11:38 23 So, again, we have no problem with them talking about
13:11:43 24 discussions they had with Facebook about selling them their
13:11:48 25 technology. Okay. That -- but this -- the idea that they can

13:11:52 1 come in an unpled antitrust claim or breach of contract or
13:11:57 2 whatever they want to call it and turn this case into a
13:12:01 3 free-for-all is just not the way we ought to be going. We
13:12:04 4 ought to be focusing the jury's attention on the issues as to
13:12:07 5 patent infringement, which are plenty complicated, as
13:12:11 6 Your Honor knows. We've got two patents, six claims, an
13:12:13 7 invalidity claim, infringement claims, and a willfulness claim.
13:12:17 8 This evidence has nothing to do with any of those and
13:12:21 9 is only going to serve to confuse our jurors, prolong the
13:12:25 10 trial, turn it into a free-for-all. And for that reason I
13:12:28 11 think Your Honor was right to stick with the ruling that you
13:12:32 12 made on Motion in Limine 3.

13:12:36 13 THE COURT: Mr. Powell, you can respond briefly.

13:12:39 14 MR. POWELL: Thank you, Your Honor.

13:12:40 15 I'm not sure what I just heard, but willful
13:12:43 16 infringement absolutely covers the conduct that we're talking
13:12:46 17 about. There's no underhanded way to assert breach of contract
13:12:51 18 or anticompetition. That's just pure fallacy, Your Honor.

13:12:55 19 The conduct we're talking about is directed at Voxer,
13:12:59 20 not the world, not the market, not harming consumers. And,
13:13:03 21 yeah, if they breached a contract called their terms of use to
13:13:07 22 inflict pain on my client, of course that's relevant to
13:13:09 23 willfulness. It shows an intent and motive to harm. So I'm
13:13:13 24 not sure what case Mr. Van Nest is litigating, but it ain't the
13:13:17 25 case that's here today.

13:13:18 1 The hypothetical negotiation, the but-for world,
13:13:21 2 yeah, it's November 2018. The but-for world starts there.
13:13:25 3 This conduct happened before. It's leading up to that
13:13:28 4 negotiation. It's real-world, not but-for world. And there's
13:13:32 5 no fantastical situation where you can sweep this evidence
13:13:36 6 under the carpet and pretend it didn't exist.

13:13:39 7 They've already allowed in all the communications
13:13:42 8 from 2012. That discussion continues into 2013, and it ends
13:13:46 9 when Facebook cuts us off from the API. It would be incredibly
13:13:50 10 unfair not to let the jury hear the culmination of the parties'
13:13:53 11 commercial relationship over a two-year period just because
13:13:56 12 they're worried that their client has a bad reputation in the
13:14:00 13 world. That's not our problem, that's theirs. We're trying
13:14:02 14 this case, not the case that he just told you about.

13:14:05 15 THE COURT: Well, the case the court sees that we're
13:14:07 16 going to try is a patent infringement case. At least that's
13:14:14 17 what we're going to start out trying, and we'll see how it
13:14:17 18 develops from that point forward.

13:14:20 19 I'm going to deny the motion to bring these things
13:14:23 20 out in opening statements. Make your opening statements based
13:14:27 21 solely on patent infringement. We will then see how this
13:14:31 22 progresses. And if there is an opening of the door or if there
13:14:36 23 is reason that I think that it should come back in, it can come
13:14:41 24 back in later. But it's not going to come in in opening
13:14:44 25 statements. I think you can open this case well enough, and

13:14:49 1 we'll go forward from there.

13:14:51 2 MR. POWELL: Thank you, Your Honor.

13:14:52 3 THE COURT: So what else do we have before we get the
13:14:56 4 jury up here at two o'clock? Are we ready to go.

13:15:01 5 MR. STONE: Nothing from the plaintiff, Your Honor.

13:15:03 6 MR. SILBERT: Your Honor, David Silbert for Meta.

13:15:05 7 Just one housekeeping issue, which is that we sent the Court a
13:15:09 8 letter on Friday to Ms. Baffes about a proposed confidentiality
13:15:14 9 protocol. I just wanted to check in with the Court on the
13:15:17 10 status of that. There will be exhibits admitted, I assume,
13:15:21 11 starting tomorrow.

13:15:21 12 THE COURT: Well, yes, I have reviewed that. Are the
13:15:27 13 parties in agreement on that protocol?

13:15:30 14 MR. STONE: We didn't have an objection to it, Your
13:15:32 15 Honor. Robert Stone for the plaintiff.

13:15:34 16 THE COURT: Then we'll proceed with that protocol.

13:15:36 17 MR. SILBERT: Thank you so much, Your Honor.

13:15:37 18 THE COURT: Now, the way we'll proceed just -- and
13:15:40 19 I'll give you some time to set up because it's going to affect
13:15:44 20 people in the audience -- is the way I select a jury is
13:15:48 21 probably a whole lot closer to what you've seen in state court.
13:15:51 22 I don't bring people up to the bench and do that kind of thing.

13:15:55 23 They'll be in the pews. I will run through my
13:15:58 24 questions, which you'll find are going to be cumulative of some
13:16:03 25 of yours and are going to be cumulative of some of the

13:16:11 1 questionnaires. But I think we need to reinforce some things.
13:16:13 2 When I get through with my questions, then the plaintiff gets
13:16:19 3 their 30 minutes of voir dire I've allotted and then the
13:16:22 4 defendant does. You can spend your time just about any way you
13:16:27 5 want to except in argument. This is voir dire. It's not
13:16:32 6 argument. You can ask your pet questions that I haven't had an
13:16:35 7 objection to, and I don't have an objection to any of what you
13:16:38 8 submitted. So don't read into it that I may have had an
13:16:43 9 objection if I don't ask your question.

13:16:45 10 You can ask additional questions off of the
13:16:48 11 questionnaires or to follow up anything that any of the jurors
13:16:53 12 have -- potential jurors have indicated. Or you can just stand
13:17:00 13 there and look nice and tell them how pretty you are and what a
13:17:03 14 great lawyer you are and you're going to win your case without
13:17:05 15 arguing that.

13:17:06 16 Now, one of the things, if I didn't make it clear
13:17:09 17 when we talked about jury selection before, I'm going to be
13:17:13 18 keeping notes up here of responses that jurors make that I
13:17:20 19 think might be problematic as to whether somebody might be a
13:17:24 20 good juror or a bad juror or whether they really want to serve
13:17:28 21 on this jury or whether they might be distracted. And that
13:17:40 22 means issues that are not grounds for legally excluding a
13:17:46 23 juror.

13:17:46 24 Before you make your challenges for cause and after
13:17:54 25 the jury panel is out of the room, I'm going to go through my

13:17:57 1 list; I urge you to be keeping your own lists. And I'll get to
13:17:59 2 a juror and I'll say, I've got a problem with what this juror
13:18:04 3 said. I'll go to the plaintiff first. If the plaintiff is
13:18:08 4 willing to strike the juror, then I'll go to the defendant.
13:18:11 5 We're not going to argue this, but if you both agree that there
13:18:18 6 is a juror you don't want, we'll take them off and they will
13:18:20 7 not appear in your strike lists.

13:18:23 8 I do that because I found when I was on your side of
13:18:26 9 the bench for many years that, if somebody really didn't want
13:18:32 10 to be on a jury, they did not make a good juror. And they
13:18:35 11 always blamed it on somebody, and I was always afraid I was
13:18:39 12 going to be the one they blamed it on that they ended up on the
13:18:42 13 jury. But this is not going to be argued. If the plaintiff
13:18:44 14 says, no, we want the juror retained, then I don't ever get to
13:18:47 15 the defendant and vice versa. But that way, if you both agree
13:18:50 16 there's a problem juror out there, since you're only getting
13:18:52 17 three strikes, we'll take that up.

13:18:58 18 Now, we're not going to tell the jurors that we're
13:19:00 19 doing because that would start a land rush and we're not going
13:19:03 20 to do that. But after we get through that, then I will take up
13:19:05 21 your challenges for cause, and then we'll recess for you to
13:19:07 22 strike your lists. And then we'll get the jurors back in here
13:19:11 23 and we will seat the eight that are actually going to try your
13:19:18 24 case.

13:19:19 25 I do not -- we're not going to go to opening

13:19:21 1 statements this evening. We're going to get the jury selected
13:19:25 2 this evening, and then we'll come back in the morning, you'll
13:19:27 3 make your opening statements, and call your first witness.

13:19:31 4 Anything else between now and two o'clock we need to
13:19:34 5 take up, or are we ready for the jury?

13:19:38 6 MR. STONE: Not for the plaintiff.

13:19:40 7 MR. VAN NEST: I think we're ready, Your Honor.
13:19:41 8 Thank you.

13:19:41 9 THE COURT: Ms. Oakes, you may let Ms. Demings know
13:19:44 10 that she can go ahead and bring the jurors up and seat them to
13:19:52 11 where they're seated by two o'clock or in that range. When
13:19:55 12 they're through with their orientation, let me know when
13:19:58 13 they're ready for us to proceed with voir dire.

13:20:00 14 MR. VAN NEST: Your Honor, could I ask one quick
13:20:02 15 question. And I apologize because I think you told us this
13:20:05 16 last time. But are they seeing the patent video now?

13:20:07 17 THE COURT: Yes.

13:20:08 18 MR. VAN NEST: So they're seeing it now, and they'll
13:20:09 19 have seen it -- they won't see it again tomorrow.

13:20:12 20 THE COURT: No. They won't see it again tomorrow.

13:20:15 21 MR. VAN NEST: Thank you. That's what I thought.

13:20:16 22 THE COURT: I was just at the Federal Circuit
13:20:18 23 Judicial Conference, and we had judges meeting. It's always
13:20:19 24 interesting to see how people around the country do things.

13:20:22 25 Some judges view the video with the jurors and ask --

13:20:27 1 and answer any questions that they may have. Those judges I
13:20:30 2 suspect come from jurisdictions that have a lot more free time
13:20:35 3 on their hands than I do.

13:20:37 4 But, no, the jurors will have seen the video before
13:20:40 5 they're up here, before the voir dire starts, and they won't
13:20:42 6 see it again.

13:20:43 7 MR. VAN NEST: Great. Thank you, Your Honor.

13:20:44 8 MR. STONE: Thank you, Your Honor.

13:20:45 9 THE COURT: All right. Thank you.

14:13:41 10 We're in recess for a few minutes.

14:13:41 11 (Open court, prospective jurors present)

14:50:44 12 THE COURT: The jurors are out in the hall ready to
14:50:46 13 be seated. Let me ask a question, because I generally at the
14:51:00 14 appropriate point in the voir dire ask the lawyers, one from
14:51:02 15 each side, to identify themselves for the plaintiff. Who
14:51:05 16 should I call on to introduce yourself and the people at your
14:51:08 17 counsel table and the witnesses you expect to call?

14:04:09 18 MR. THOMPSON: Blake Thompson for the plaintiff,
14:04:11 19 Your Honor.

14:04:12 20 THE COURT: And for the defendant?

14:04:13 21 MR. JONES: Your Honor, Mike Jones.

14:04:15 22 THE COURT: All right. We've got it.

14:04:17 23 MR. JONES: Thank you, sir.

14:04:18 24 THE COURT: Are we ready to go.

14:04:21 25 MR. THOMPSON: We're ready.

14:04:21 1 THE COURT: All right. Let's bring the jurors -- the
14:04:23 2 potential jurors in and seat them, then. And they are going to
14:04:25 3 be on my right; is that correct? All right.

14:04:28 4 (Open court, prospective jurors present)

14:06:39 5 THE COURT: All right. You may be seated.

14:06:45 6 Good afternoon, ladies and gentlemen. I'd like to
14:06:49 7 welcome all members of the jury panel to the United States
14:06:52 8 District Court here in Austin. My name is Lee Yeakel, and I am
14:06:56 9 one of two district judges for the Austin Division of the
14:07:00 10 Western District of Texas.

14:07:02 11 As Ms. Demings, the Division Deputy Clerk, explained
14:07:05 12 to you, the Western District of Texas consists of seven
14:07:09 13 divisions: Austin, Waco, San Antonio, El Paso, Del Rio, Pecos,
14:07:17 14 and Midland-Odessa. The federal court here in Austin considers
14:07:22 15 appropriate federal actions brought in Bastrop, Blanco,
14:07:26 16 Burleson, Burnet, Caldwell, Gillespie, Hays, Kimble, Lampasas,
14:07:31 17 Lee, Llano, Mason, McCulloch, San Saba, Travis, Washington, and
14:07:37 18 Williamson Counties.

14:07:39 19 The area covered by the Austin Division is quite
14:07:42 20 large, and that is the reason that some of you were required to
14:07:46 21 travel a substantial distance to participate in these court
14:07:50 22 proceedings. The court recognizes the sacrifices that many of
14:07:55 23 you are making to perform this jury service, and I greatly
14:07:58 24 appreciate your efforts.

14:08:00 25 Now, you've been summoned to try a civil case. When

14:08:06 1 parties to a federal lawsuit like this one desire and qualify
14:08:08 2 for a resolution of their case by a jury, federal law entitles
14:08:13 3 them to receive the benefit of an impartial jury of their
14:08:16 4 peers. To obtain such a jury, persons are called from
14:08:21 5 throughout the area which comprises that particular division of
14:08:25 6 the district, in this case, from the 17 counties that make up
14:08:28 7 the Austin Division.

14:08:31 8 Persons are selected at random to assure that they
14:08:35 9 represent a cross-section of people. It was this random
14:08:40 10 selection process that resulted in your being here today. In
14:08:43 11 fact, you were randomly selected by a computer. So if you're
14:08:47 12 in the group of people that believes a computer has never done
14:08:51 13 you a favor, I'm sure that has been reinforced by your name
14:08:55 14 popping out of the computer and getting you down here today.
14:08:59 15 But, again, your participation in the jury process, which is
14:09:02 16 vital to our nation's judicial system, is especially
14:09:08 17 appreciated by the court and the parties involved in this
14:09:10 18 litigation.

14:09:12 19 Now, let me share with you a little bit about the
14:09:15 20 jury system and its importance to our society and why it is
14:09:18 21 important to this court and these parties and you.

14:09:22 22 Calling citizens to hear disputes has been known
14:09:26 23 throughout history. The jury system is mentioned as far back
14:09:30 24 as the Pentateuch, the first five books of the Hebrew Bible.
14:09:34 25 The Jewish people would impanel juries to decide questions of

14:09:37 1 property value and property ownership, and there is some
14:09:43 2 thought that, traditionally, the reason we have twelve jurors
14:09:46 3 in our typical jury is a reflection of the twelve Tribes of
14:09:50 4 Israel and the Twelve Apostles. Although, as time has moved
14:09:53 5 on, we have adjusted that a little bit, and we're only going to
14:09:57 6 select eight of you for jury service today.

14:10:00 7 Modern-day juries have historic roots in Byzantine,
14:10:04 8 Greek, Roman, and European systems. The Greeks began using the
14:10:09 9 jury system in about 1500 BC. Greek juries were sometimes
14:10:14 10 huge. 501 jurors decided the fate of Socrates. And you think
14:10:22 11 you've had some parking problems here today when we only
14:10:25 12 summoned about 23 of you to be on this panel.

14:10:27 13 The Romans adopted the jury system from the Greeks.
14:10:32 14 The Romans are responsible for bringing the jury system to
14:10:36 15 England in about the fourth century. The English experience
14:10:39 16 has been a leading influence in shaping the modern American
14:10:43 17 jury system.

14:10:45 18 Following its advance by the Romans, England had a
14:10:49 19 rough system of juries in the late ninth century under Alfred.
14:10:53 20 The Normans, following their arrival in the 11th century,
14:10:57 21 established the foundations of the modern jury system.

14:11:01 22 In 1215 a tyrannical English king, King John,
14:11:07 23 attempted to do away with the right to trial by jury which had
14:11:10 24 been part of the English judicial system for over 700 years.
14:11:14 25 The English people would not stand for the deprivation of this

14:11:18 1 right, among others that they cherished, so in a misty meadow
14:11:22 2 called Runnymede, King John was forced to sign the Magna Carta,
14:11:27 3 which guaranteed to the English people the right to jury trials
14:11:29 4 and other rights as well. Twenty-eight states have adopted the
14:11:34 5 language of the Magna Carta verbatim and placed it in their
14:11:39 6 state constitutions in ensuring the right to a trial by jury in
14:11:43 7 state court.

14:11:44 8 The concept of jury trials was so deeply ingrained in
14:11:48 9 the American colonists in the settling of America, that when
14:11:51 10 another tyrannical English king, King George, III, attempted to
14:11:56 11 deny the right to jury trials to the colonists,
14:11:59 12 Thomas Jefferson, for the Second Continental Congress, in
14:12:04 13 penning the complaints against the Crown, set out the denial of
14:12:08 14 the right to jury trial as one of the specific bases for
14:12:11 15 separation from England. The War of Independence followed,
14:12:16 16 people fought and died to secure our rights and independence,
14:12:20 17 and today the United States Constitution guarantees the right
14:12:23 18 to jury trials.

14:12:25 19 Now, democracy makes very few demands of its
14:12:29 20 citizens. We're required to pay taxes and render service in
14:12:33 21 time of war. Some have said that jury service is akin to
14:12:37 22 service for your country in time of war in importance, and I
14:12:41 23 have no quarrel with that statement.

14:12:43 24 To the average citizen there are, in my opinion, but
14:12:47 25 two things you must do to preserve democracy: And that's to

14:12:51 1 respond for jury service and to vote. And your presence here
14:12:55 2 today satisfies one of those, and you'll have the opportunity
14:12:59 3 in November for the other.

14:13:02 4 Now, we're about to select a jury for a case styled
14:13:06 5 *Voxer, Incorporated and Voxer IP, LLC, versus Meta Platforms,*
14:13:13 6 *Incorporated, formally known as Facebook, Inc., and Instagram,*
14:13:18 7 *LLC.* It is Cause Number 1:20-CV-655-LY on the docket of my
14:13:26 8 court.

14:13:26 9 We call what we're doing now voir dire, which derives
14:13:32 10 its name from the French *vua-deer*, and many people pronounce it
14:13:37 11 *vua-deer*. But in Texas we just say *vor-dire*. It seems to roll
14:13:41 12 off the tongue better and go better with BBQ than *vua-deer*. So
14:13:46 13 we're not in Paris today, so we're going to pronounce it the
14:13:49 14 Texas way.

14:13:50 15 Now, I will ask you a number of questions, and it's
14:13:55 16 imperative that you listen carefully to the questions I'm about
14:13:58 17 to ask because you may be selected to serve on the jury in this
14:14:01 18 case.

14:14:01 19 After I have finished asking questions, the attorneys
14:14:05 20 for each side will have an opportunity to ask questions, and
14:14:10 21 then the attorneys will exercise strikes that they are allotted
14:14:14 22 to exclude certain members of the panel so that we end up with
14:14:18 23 eight jurors, as I've mentioned, who will ultimately remain and
14:14:23 24 hear the evidence in this case.

14:14:24 25 The process of voir dire requires the court and the

14:14:28 1 attorneys for each party to ask potential jurors about their
14:14:35 2 backgrounds, knowledge, biases, and prejudices. In the process
14:14:39 3 of doing this, these questions may at times feel intrusive to
14:14:42 4 you. Please understand that it is certainly not the court or
14:14:45 5 the parties' intention to intrude on your personal business.
14:14:50 6 However, to ensure that the jury selected for this case has no
14:14:54 7 knowledge of the facts or the parties to the case and holds no
14:14:58 8 biases or prejudices, it is necessary to ask these questions.

14:15:03 9 If at any time you would like to provide your answer
14:15:06 10 to any question privately, please simply indicate that you
14:15:10 11 would like to do so, I will have you approach the bench, and
14:15:14 12 you can then answer the question with only the court and
14:15:18 13 attorneys present.

14:15:19 14 When you answer a question, I would appreciate it if
14:15:23 15 you would state your name and your seat number. That is the
14:15:27 16 seat number you're in at this moment in the courtroom. And
14:15:31 17 please use the microphone that will be provided to you by
14:15:34 18 Ms. Baffes so that the court reporter's record will be able to
14:15:38 19 reflect who is answering.

14:15:40 20 Now, Mr. Blake Thompson, would you please stand.

14:15:45 21 The person standing is Mr. Blake Thompson of the law
14:15:49 22 firm of Mann, Tindel & Thompson, and he represents the
14:15:53 23 plaintiffs in this case, Voxer Inc. and Voxer IP, LLC.

14:15:59 24 Mr. Thompson would you please introduce the
14:16:03 25 representatives, cocounsel, local counsel, legal assistants or

14:16:07 1 others who are now or who will be seated at your counsel table
14:16:12 2 during this trial.

14:16:15 3 MR. THOMPSON: Yes, Your Honor. Again, my name is
14:16:17 4 Blake Thompson, and members of my team are Sam Stake,
14:16:20 5 Mike Powell, Robert Stone, my client, Thomas Katis, and
14:16:27 6 Johanna Hillard.

14:16:27 7 THE COURT: Mr. Thompson, would you please read to
14:16:29 8 the members of the panel the list of all witnesses that
14:16:32 9 Voxer -- that the Voxer parties expect to call in this case.

14:16:37 10 MR. THOMPSON: Yes, Your Honor. We'll be calling,
14:16:38 11 again, our client Thomas Katis. We'll also be calling
14:16:42 12 Matthew Ranney, Michael Mitzenmacher, Benjamin Davenport,
14:16:47 13 Christopher Daniels, Peter Deng, and Alan Ratliff.

14:16:51 14 THE COURT: Members of the jury panel, do any of you
14:16:54 15 recognize, or are any of you or any member of your family
14:16:58 16 familiar with, to your knowledge, personally acquainted with,
14:17:02 17 related to, had any business dealings with, or ever been
14:17:06 18 employed by Voxer Incorporated, Voxer IP, LLC, or their lawyers
14:17:12 19 or legal assistants who have been introduced, or any of the
14:17:16 20 persons whose names Mr. Thompson has just listed for you?

14:17:20 21 If so, please raise your hand.

16:19:02 22 (No response)

14:17:25 23 THE COURT: Thank you. Mr. Jones, would you please
14:17:28 24 stand.

14:17:30 25 MR. JONES: Yes, sir.

14:17:31 1 THE COURT: The person standing is Mr. Mike Jones
14:17:34 2 from Potter Minton PC, and he represents the defendants in this
14:17:38 3 case, Meta Platforms, Incorporated, formally known as Facebook,
14:17:43 4 incorporated, and Instagram, LLC.

14:17:46 5 Mr. Jones, would you introduce the representatives
14:17:49 6 cocounsel, local counsel, legal assistants, or others who are
14:17:54 7 or will be seated at the counsel table with you.

14:17:57 8 MR. JONES: Thank you, Your Honor. Yes, sir.

14:18:00 9 Seated at counsel table is our lead counsel, Robert
14:18:04 10 Van Nest. Beside him is David Silbert. This is Mr. Paven
14:18:15 11 Malhotra. Seated next to Mr. Malhotra is Puja Parikh. Seated
14:18:21 12 next to her is Christa Anderson. Seated next to her is
14:18:26 13 Gene Paige. My client is John Poffenberger from Facebook.

14:18:34 14 Thank you, Your Honor.

14:18:35 15 THE COURT: Mr. Jones, would you please read to the
14:18:37 16 members of the jury panel the list of all witnesses that the
14:18:40 17 defendants expect to call in this case.

14:18:43 18 MR. JONES: Yes, sir.

14:18:47 19 Dave Capra, Jeremiah Chan, Federico Larumbe,
14:18:52 20 Ken Leland, Victor Loh, Abhischek Mathur, John Poffenberger,
14:19:03 21 Jacob Stinson, Cathy Lawton, Samrat Bhattacharjee, and
14:19:10 22 Kevin Jeffay, Your Honor.

14:19:12 23 THE COURT: Members of the jury panel, do any of you
14:19:15 24 recognize, or are any of you or any member of your family known
14:19:19 25 to you, familiar with, personally acquainted with, related to,

14:19:25 1 or had any business dealings with or ever been employed by the
14:19:29 2 defendants or defendant's lawyers or legal assistants who were
14:19:33 3 introduced or any of the persons whose name Mr. Jones has just
14:19:36 4 listed for you?

14:19:37 5 If so, please raise your hand.

16:21:47 6 (No response)

14:19:40 7 THE COURT: Thank you. You may be seated.

14:19:43 8 MR. JONES: Thank you, sir.

14:19:45 9 THE COURT: Ladies and gentlemen of the jury panel,
14:19:47 10 to the best of your knowledge, have any of the attorneys in
14:19:50 11 this case or members of their law firms acted as your attorney
14:19:55 12 or the attorney for any member of your immediate family or
14:19:58 13 close friends that you know about?

16:22:10 14 (No response)

14:20:03 15 THE COURT: Do any of you recognize any other member
14:20:07 16 of the panel as being a close, personal friend, acquaintance,
14:20:11 17 or business associate? Now you laugh because I've just told
14:20:15 18 you a computer selected all of you, but I asked that question
14:20:18 19 one time and we had two people that had played golf in the same
14:20:23 20 foursome for the last 20 years once or twice a week.

14:20:26 21 So do any of you know any of the others of you on the
14:20:29 22 jury panel? If so, please raise your hand.

16:22:43 23 (No response)

14:20:32 24 THE COURT: Do any of you know or do you know anyone
14:20:41 25 that you know of that has interest in the outcome of this case?

14:20:46 1 (No response)

14:20:47 2 THE COURT: The attorneys, in consultation with me
14:20:50 3 and in several discussions about this, have estimated that this
14:20:55 4 case will take approximately six to seven trial days, which
14:21:00 5 means we will move into next week and probably should finish
14:21:05 6 this case up by the middle of the week.

14:21:08 7 Is there anyone who would suffer any undue hardship
14:21:12 8 or have any special problem serving on a jury for that length
14:21:16 9 of time? I know it is a hardship and a problem for all of you,
14:21:20 10 and your service is appreciated, but is there anyone that would
14:21:24 11 suffer any undue hardship or problems?

14:21:31 12 (No response)

14:21:31 13 THE COURT: Thank you. Do any of you have any
14:21:32 14 illness in your family or any business problem or similar
14:21:36 15 personal concern which would make it difficult for you if you
14:21:40 16 were on this jury to be attentive to the evidence that's
14:21:44 17 presented?

14:21:44 18 If so, please raise your hand.

14:21:46 19 (No response)

14:21:46 20 THE COURT: Do any of you have any problem with your
14:21:51 21 eyesight or your hearing or any other physical disability which
14:21:55 22 in any manner would prevent you from either seeing or hearing
14:21:59 23 the evidence presented at trial, knowing that the eight of you
14:22:04 24 who are selected will be sitting over here in the jury box to
14:22:07 25 my right, which is against the wall, and the witness will be

14:22:11 1 sitting in this stand here to my right. And we have pretty
14:22:16 2 good microphone systems and electronic systems in here when
14:22:21 3 they work. But know if there's a problem during this trial,
14:22:25 4 everything you're looking at went to the lowest bidder. That's
14:22:29 5 what the government gave us here.

14:22:31 6 But is there anyone -- usually it's the court that's
14:22:33 7 accused of having the bad eyesight or hearing, but is there any
14:22:36 8 of you-all that might have a problem?

16:24:53 9 (No response)

14:22:39 10 THE COURT: Seeing none, thank you.

14:22:42 11 Now, Voxer asserts that the defendant's Facebook Live
14:22:47 12 and Instagram Live services and features infringe on two
14:22:54 13 patents that were issued to Voxer. Now, this is the assertion
14:22:59 14 by the plaintiff. I'm not telling you this is what happened.
14:23:02 15 This is what the claims are. You will make the decision as to
14:23:06 16 what's happened.

14:23:07 17 But Voxer asserts that Meta and Instagram directly
14:23:12 18 infringed Voxer's patents and directly infringed by inducing or
14:23:16 19 contributing to end users' infringements. That's what they
14:23:22 20 claim.

14:23:22 21 They additionally contain that Meta's, which was
14:23:26 22 formally known as Facebook, infringement is willful because
14:23:29 23 Facebook knew of Voxer's patents, knew that the Facebook Live
14:23:34 24 and Instagram Live services and features infringed, but they
14:23:38 25 deliberately chose to continue in their course of using the

14:23:42 1 infringing services and features and inducing or contributing
14:23:47 2 to end users' infringement.

14:23:49 3 Because of this, Voxer seeks damages for no less than
14:23:53 4 a reasonable royalty for the defendant's alleged infringements,
14:23:58 5 together with interest and costs.

14:24:01 6 Now, the defendants on the other hand, Facebook and
14:24:09 7 Instagram, deny Voxer's allegations of patent infringement.
14:24:13 8 And, first, Facebook contends that its Facebook Live and
14:24:17 9 Instagram Live products do not infringe Voxer's patents.
14:24:22 10 Facebook contends that it independently developed its Facebook
14:24:26 11 Live and Instagram video products without using any of Voxer's
14:24:31 12 claimed inventions.

14:24:32 13 So, again, like what I told you about Voxer, I'm not
14:24:35 14 telling you that any of this is true. That will be your
14:24:38 15 decision. This is what the defendant's allegations and
14:24:42 16 positions are.

14:24:43 17 Accordingly, Facebook contends that Voxer will fail
14:24:47 18 in meeting its burden of proof to prove that Facebook practiced
14:24:51 19 every aspect of Voxer's patented technology. And, second,
14:24:55 20 Facebook contends that some of the patents Voxer asserts in
14:25:00 21 this case are invalid.

14:25:02 22 Now, patent law requires a patent to be found invalid
14:25:07 23 if the claimed invention had already been invented by others or
14:25:11 24 would have been obvious to people in the field. Facebook
14:25:15 25 contends that some of Voxer's patents are invalid because

14:25:18 1 someone else developed the claimed inventions before Voxer did.
14:25:22 2 And, finally, Facebook contends that, even if infringement of a
14:25:27 3 valid patent is found, the damages Voxer requests are
14:25:31 4 unreasonable.

14:25:32 5 So that, in a nutshell, is the claims of the parties.
14:25:37 6 This will play itself out in more detail for the eight of you
14:25:40 7 that are selected to serve on this jury. And later in this
14:25:46 8 proceeding the lawyers will give their opening statements,
14:25:48 9 which will be more detailed renditions of their understanding
14:25:53 10 of the facts and their allegations in this case.

14:25:56 11 But based on the sort summary that I have just
14:25:58 12 provided you, I want to ask you a few questions concerning any
14:26:02 13 knowledge you might have about this case.

14:26:05 14 Have any of you read anything about this case in the
14:26:10 15 newspapers, or have you heard anything about it on the radio or
14:26:13 16 in conversations with others or seen anything on television
14:26:17 17 about it, or have you learned, heard, read, or seen anything
14:26:21 18 about it from any source whatsoever, other than in this
14:26:26 19 courtroom or in connection with your initial qualification or
14:26:30 20 orientation for jury service by Ms. Demings or any other court
14:26:35 21 personnel?

14:26:35 22 If you've heard anything about it other than in that
14:26:39 23 context, please raise your hand.

14:26:49 24 You've got to stick your hand way up so I can see
14:26:51 25 you.

14:26:52 1 Yes. Would you please state your name and seat
14:26:55 2 number.

14:26:55 3 JUROR KALISH: Howard Kalish, Number 21.

14:26:59 4 THE COURT: All right. I do not want you to tell me
14:27:01 5 at this time what you may have read or heard about this case.
14:27:04 6 Rather, I want to ask you a few specific questions about the
14:27:10 7 matter.

14:27:10 8 First, what is your source of information: newspaper,
14:27:12 9 radio, television, or conversations with others?

14:27:15 10 JUROR KALISH: It's an online newspaper magazine.

14:27:19 11 THE COURT: All right. And how many separate
14:27:22 12 articles did you see or read?

14:27:23 13 JUROR KALISH: Just one.

14:27:25 14 THE COURT: And when about was that?

14:27:27 15 JUROR KALISH: Oh, maybe six or eight months ago.

14:27:33 16 THE COURT: All right. Did you read the article all
14:27:35 17 the way through, or did you just read a paragraph or two and
14:27:39 18 scan the remainder?

14:27:40 19 JUROR KALISH: I just scanned it.

14:27:42 20 THE COURT: All right. Do you now remember any
14:27:44 21 specific fact or circumstances covered in the article which you
14:27:48 22 may not have -- which you may not have already heard here in
14:27:52 23 court? But don't specify that fact or circumstance to me, just
14:27:56 24 do you remember anything specific about it?

14:27:59 25 JUROR KALISH: Yes.

14:27:59 1 THE COURT: All right. In any event, regardless of
14:28:10 2 what it is that you've heard, have you formed an opinion
14:28:12 3 concerning any of the issues to be tried in this case?

14:28:16 4 JUROR KALISH: No.

14:28:18 5 THE COURT: If selected as a juror in this case,
14:28:24 6 would you be able to disregard what you've heard in its
14:28:29 7 entirety, put it out of your mind, anything at all you may have
14:28:34 8 read in that article, and decide the case based solely on the
14:28:37 9 evidence presented here in the courtroom and during the trial
14:28:43 10 and follow the law as I give it to you?

14:28:45 11 JUROR KALISH: Yes.

14:28:46 12 THE COURT: All right. Give me your seat number one
14:28:48 13 more time.

14:28:48 14 JUROR KALISH: Twenty-one.

14:28:50 15 THE COURT: All right. Thank you. You may be
14:28:58 16 seated.

14:28:58 17 Anyone else?

14:28:59 18 (No response)

14:28:59 19 THE COURT: Now, let me ask you this: Is there
14:29:17 20 anyone on the jury panel -- this to some extent goes over what
14:29:22 21 you may have gotten in your jury questionnaire that was sent
14:29:25 22 out, but it's information that I want to know here. Is there
14:29:31 23 anyone on this panel that's ever served on a grand jury in the
14:29:34 24 past.

18:00:00 25 (No response)

14:29:36 1 THE COURT: Is there anyone here on the panel who has
14:29:39 2 ever served on a jury like this, what we call a regular jury or
14:29:44 3 a petit jury? If so, please raise your hand.

14:29:56 4 JUROR RUDOLPHI: Christine Rudolphi, Seat Number 6.

14:30:02 5 THE COURT: What was your seat number again?

14:30:04 6 JUROR RUDOLPHI: Six.

14:30:05 7 THE COURT: All right. Was your prior jury service
14:30:08 8 on a state or federal jury?

14:30:10 9 JUROR RUDOLPHI: State.

14:30:11 10 THE COURT: And how many times have you served on a
14:30:13 11 jury?

14:30:14 12 JUROR RUDOLPHI: Twice.

14:30:17 13 THE COURT: And when did you serve on a jury each
14:30:20 14 time? Approximately how long ago?

14:30:23 15 JUROR RUDOLPHI: One in 2015 and one in 2017.

14:30:27 16 THE COURT: All right. Were the cases civil or
14:30:29 17 criminal or one of each?

14:30:30 18 JUROR RUDOLPHI: One of each.

14:30:31 19 THE COURT: Were you the foreman of either one of
14:30:33 20 those jurors?

14:30:34 21 JUROR RUDOLPHI: No, sir.

14:30:35 22 THE COURT: Without telling me the outcome in each
14:30:38 23 case, did the jury deliberate and arrive at a verdict?

14:30:41 24 JUROR RUDOLPHI: It did.

14:30:42 25 THE COURT: Is there anything about that prior jury

14:30:45 1 experience that would prevent you from being a fair and
14:30:48 2 impartial juror if chosen in this case?

14:30:51 3 JUROR RUDOLPHI: No, sir.

14:30:51 4 THE COURT: Thank you.

14:30:52 5 Who else?

14:30:58 6 JUROR CHAMPLIN: Jacob Champlin, 17.

14:31:05 7 THE COURT: All right. And was your prior jury
14:31:07 8 experience in state or federal court?

14:31:09 9 JUROR CHAMPLIN: State.

14:31:09 10 THE COURT: And how many times have you served on a
14:31:11 11 jury?

14:31:12 12 JUROR CHAMPLIN: Once.

14:31:13 13 THE COURT: And how long ago was it?

14:31:14 14 JUROR CHAMPLIN: Ten years.

14:31:16 15 THE COURT: Was the case civil or criminal?

14:31:18 16 JUROR CHAMPLIN: Criminal.

14:31:18 17 THE COURT: Were you the foreman of the jury?

14:31:20 18 JUROR CHAMPLIN: No.

14:31:21 19 THE COURT: And without, again, disclosing the
14:31:24 20 outcome, did the jury deliberate and arrive at a verdict?

14:31:27 21 JUROR CHAMPLIN: Yes.

14:31:28 22 THE COURT: Is there anything in that prior jury
14:31:31 23 experience that would prevent you from being fair and impartial
14:31:34 24 if you were selected as a member of this jury?

14:31:36 25 JUROR CHAMPLIN: No.

14:31:37 1 THE COURT: Thank you.

14:31:37 2 Anyone else? All right. This next question.

14:31:47 3 JUROR WELCH: My name Roxann Welch. I'm Number 2.

14:31:55 4 THE COURT: And Ms. Welch, was your prior service in

14:32:01 5 a federal court or a state court?

14:32:02 6 JUROR WELCH: I thought it was a county court. Is

14:32:04 7 that a thing or not? I've been on two juries here in Austin,

14:32:10 8 and they were both criminal cases.

14:32:12 9 THE COURT: It would have been state, I'm pretty

14:32:14 10 sure.

14:32:14 11 JUROR WELCH: Okay.

14:32:14 12 THE COURT: How many times have you served on a jury?

14:32:17 13 JUROR WELCH: Twice.

14:32:18 14 THE COURT: And how long ago was that?

14:32:20 15 JUROR WELCH: About 7 years and 14 years.

14:32:22 16 THE COURT: And were the cases civil, criminal, or

14:32:24 17 one of each?

14:32:25 18 JUROR WELCH: Criminal.

14:32:27 19 THE COURT: All right. Were you the foreman of

14:32:29 20 either jury?

14:32:30 21 JUROR WELCH: No.

14:32:30 22 THE COURT: Without telling me the outcome, did the

14:32:33 23 jury deliberate and arrive at a verdict?

14:32:36 24 JUROR WELCH: Yes.

14:32:36 25 THE COURT: In each case?

14:32:37 1 JUROR WELCH: Yes.

14:32:37 2 THE COURT: And is there anything in any of that
14:32:39 3 prior jury experience that would prevent you from being a fair
14:32:42 4 and impartial juror if chosen in this case?

14:32:44 5 JUROR WELCH: No.

14:32:45 6 THE COURT: Thank you. Anybody else? Please stick
14:32:49 7 your hand way up so I can see you from here.

14:32:51 8 (No response)

14:32:52 9 THE COURT: As will become more obvious to the eight
14:32:56 10 of you that serve on this jury, I'm really old, so you've got
14:32:59 11 to bear that in mind.

14:33:00 12 All right. This next question is directed to those
14:33:03 13 of you that might have served in the military.

14:33:05 14 Is there anyone on the panel who has ever served on
14:33:09 15 general or special court-martial? Please raise your hand.

18:00:00 16 (No response)

14:33:15 17 THE COURT: Have you or any family member or close
14:33:18 18 friend, other than in a divorce proceeding, ever participated
14:33:22 19 in a lawsuit or other legal action as a party, witness, or any
14:33:29 20 other capacity? If so, please raise your hand.

14:33:33 21 JUROR MOORE-CATION: Monica Moore-Cation, Seat 1.

14:33:39 22 And it was an eviction case.

14:33:41 23 THE COURT: All right. And in what capacity were you
14:33:45 24 involved: a witness? a party?

14:33:46 25 JUROR MOORE-CATION: I was the residence owner.

14:33:49 1 THE COURT: All right. Is there anything in that
14:33:51 2 prior experience that would prevent you from being a fair and
14:33:54 3 impartial juror if selected in this case.

14:33:56 4 JUROR MOORE-CATION: No.

14:33:58 5 THE COURT: Thank you. I think we have one more down
14:34:00 6 the row here.

14:34:13 7 JUROR SMITH: Aaron Smith, Number 19.

14:34:14 8 I was a defendant in an employment lawsuit.

14:34:17 9 THE COURT: Pardon me. I didn't hear the last part.

14:34:19 10 JUROR SMITH: I was a defendant in an employment
14:34:21 11 lawsuit.

14:34:22 12 THE COURT: All right. Is there anything in that
14:34:24 13 prior jury experience that would prevent you from being a fair
14:34:27 14 and impartial juror if selected in this case?

14:34:32 15 JUROR SMITH: No.

14:34:32 16 THE COURT: Thank you. Anyone else?

14:34:34 17 (No response)

14:34:34 18 THE COURT: Seeing none, have any of you, or a close
14:34:40 19 family member known to you, filed a lawsuit or -- well, had a
14:34:47 20 desire to file a lawsuit or other legal action but were
14:34:51 21 prevented from doing so for some reason?

18:00:00 22 (No response)

14:34:56 23 THE COURT: Have any of you attended law school or
14:35:03 24 had any special training in the law or worked in a law library,
14:35:08 25 a law school, a lawyer's office, or other business related to

14:35:12 1 the law?

14:35:13 2 If so, please raise your hand.

14:35:14 3 JUROR MOORE-CATION: I have worked in multiple law
14:35:24 4 offices.

14:35:25 5 THE COURT: You've got to state your name and seat
14:35:27 6 number.

14:35:28 7 JUROR MOORE-CATION: Sorry. Monica Moore-Cation,
14:35:30 8 Seat 1.

14:35:30 9 And I have worked in multiple law offices.

14:35:32 10 THE COURT: All right. For a law firm?

14:35:33 11 JUROR MOORE-CATION: Yes.

14:35:34 12 THE COURT: All right. And would that experience
14:35:35 13 prevent you from following the court's instructions in this
14:35:39 14 case, even though you might disagree with my instructions.

14:35:43 15 JUROR MOORE-CATION: No.

14:35:45 16 THE COURT: All right. And would that experience
14:35:46 17 prevent you from being a fair and impartial juror in this case?

14:35:49 18 JUROR MOORE-CATION: No.

14:35:50 19 THE COURT: And would that experience prevent you
14:35:52 20 from rendering a verdict based solely on the evidence presented
14:35:55 21 in the courtroom and the instructions that I give you as a
14:35:59 22 juror?

14:36:00 23 JUROR MOORE-CATION: No.

14:36:01 24 THE COURT: Thank you.

14:36:02 25 JUROR KALISH: Howard Kalish, 21.

14:36:11 1 I'm retired now, but I worked for a technology
14:36:14 2 company here in Austin for many years, and I worked with the
14:36:17 3 lawyers there on patent and trademark infringement in my role
14:36:21 4 there. And I have fairly good ongoing training on patent and
14:36:28 5 trademark infringement.

14:36:32 6 THE COURT: Is there anything in that experience that
14:36:34 7 would prevent you -- this is the \$64 question -- from following
14:36:38 8 my instructions in this case even if you disagree with those
14:36:42 9 instructions?

14:36:43 10 JUROR KALISH: No.

14:36:44 11 THE COURT: Would that experience prevent you in any
14:36:46 12 way from being a fair and impartial juror in this case?

14:36:49 13 JUROR KALISH: No.

14:36:50 14 THE COURT: And would that experience prevent you
14:36:52 15 from rendering a verdict based solely on the evidence presented
14:36:55 16 here in the courtroom and the instructions that I give to the
14:36:59 17 jury?

14:36:59 18 JUROR KALISH: I think that's a yes answer. I'm not
14:37:05 19 sure. I can do it.

14:37:06 20 THE COURT: All right. In other words, you could put
14:37:07 21 your experiences out of your mind and render a verdict based
14:37:10 22 solely on what you hear in the courtroom and the instructions
14:37:13 23 that I give you; is that correct?

14:37:14 24 JUROR KALISH: Yes.

14:37:15 25 THE COURT: All right. Thank you.

14:37:16 1 Anyone else? Any law-related employment or
14:37:20 2 background?

14:37:25 3 (No response)

14:37:25 4 THE COURT: Now, members of the panel who have served
14:37:26 5 on juries before are already aware that, once selected as a
14:37:31 6 juror, you become the judge of facts in the case, the judge of
14:37:34 7 the credibility of the witnesses, and the judge of the weight
14:37:38 8 to be given the testimony of the witnesses.

14:37:41 9 It is your prerogative as a juror to believe all of
14:37:44 10 the testimony of a witness, only part of the testimony of a
14:37:47 11 witness, or you may totally disbelieve the testimony of a
14:37:51 12 witness. This is completely up to you. As jurors, you are the
14:37:57 13 exclusive judges of the facts, the credibility of the
14:38:00 14 witnesses, and the weight to be given their testimony.

14:38:06 15 Whereas the jury is the exclusive judge of the facts,
14:38:09 16 the court, which is represented by me, is the sole judge of the
14:38:15 17 law applicable in the case. At the conclusion of all the
14:38:19 18 testimony and after the lawyers for both sides have presented
14:38:22 19 their summary of the case to you and their closing arguments, I
14:38:26 20 will explain the law controlling the issues involved in this
14:38:30 21 case. You are to be governed by my explanation of the
14:38:34 22 applicable law, which will be set out in what is termed the
14:38:38 23 "Court's Instructions and Charge."

14:38:41 24 If you are selected to sit as a juror on this case,
14:38:45 25 will you be able to -- able and willing to render a verdict

14:38:49 1 based solely on the evidence presented at the trial and the law
14:38:52 2 as I give it to you in my instructions, disregarding any other
14:38:57 3 ideas, notions, or beliefs about the law that you may have
14:39:01 4 encountered in reaching your verdict?

14:39:03 5 If you would be unable or unwilling to render a
14:39:07 6 verdict based solely on the evidence presented at trial and the
14:39:11 7 law as I give it to you in my instructions, please raise your
14:39:14 8 hand at this time.

18:00:00 9 (No response)

14:39:16 10 THE COURT: This is a civil case. Therefore, the
14:39:22 11 plaintiffs have the burden of proving their claims by what is
14:39:25 12 called a preponderance of the evidence. Those of you who have
14:39:29 13 served on criminal juries are familiar with the requirement of
14:39:33 14 proof beyond a reasonable doubt. Please bear in mind that, in
14:39:38 15 civil cases, the proof standard is not beyond a reasonable
14:39:40 16 doubt, as in criminal cases; but, rather, the plaintiffs must
14:39:45 17 prove each claim by a preponderance of the evidence.

14:39:51 18 This means that the plaintiff must produce evidence
14:39:54 19 which, when considered in the light of all of the facts, leads
14:39:57 20 you to believe that the plaintiff's claims are more likely true
14:40:00 21 than not. In other words, the plaintiff must prove each of its
14:40:08 22 claims by evidence that shows merely by the greater weight of
14:40:14 23 the credible evidence. It's a balancing test. It's above 50
14:40:20 24 percent.

14:40:20 25 Is there anyone among you who would require Voxer to

14:40:24 1 prove each claim by a preponderance -- would be unable -- let
14:40:28 2 me just start over.

14:40:30 3 Is there anyone among you who would be unable to
14:40:33 4 require Voxer to prove each claim by a preponderance of the
14:40:36 5 evidence as I have explained that term to you?

18:00:00 6 (No response)

14:40:40 7 THE COURT: Is there anyone among you who would hold
14:40:44 8 Voxer to a greater or lesser standard of proof?

18:00:00 9 (No response)

14:40:51 10 THE COURT: You will be called upon in this case to
14:40:53 11 decide liability, and you may be called upon to award money
14:40:56 12 damages if you find they are appropriate.

14:40:59 13 Do any of you have any religious, philosophical, or
14:41:04 14 other belief that prevents you from acting as an impartial
14:41:08 15 juror in this case?

18:00:00 16 (No response)

14:41:10 17 THE COURT: Do any of you have any strong feelings
14:41:12 18 either way about whether or not to award monetary damages that
14:41:18 19 would cause you not to be able to follow the law in that regard
14:41:22 20 as I give it to you?

18:00:00 21 (No response)

14:41:27 22 THE COURT: Now, do any of you have a Voxer,
14:41:34 23 Facebook, or Instagram account?

14:41:39 24 Almost everyone.

14:41:40 25 Do any of you have strong feelings, positive or

14:41:48 1 negative, toward Voxer, Facebook, or Instagram, based on your
14:41:52 2 own experience or experience of someone close to you?

14:42:01 3 All right. I'm going to let the lawyers follow up
14:42:03 4 with questions, so note which jurors have indicated so.

14:42:09 5 THE COURT: Have you or any member of your immediate
14:42:12 6 family, or your employer, current or previous, ever been
14:42:15 7 employed or had any dealings with the United States Patent and
14:42:18 8 Trademark Office? Please raise your hand.

14:42:21 9 (No response)

14:42:27 10 THE COURT: Have you or any member of your immediate
14:42:29 11 family ever invented a new product or process or applied for a
14:42:35 12 United States or foreign patent?

14:42:41 13 (Several jurors raise their hands)

14:42:45 14 THE COURT: Have any of you had an experience in
14:42:47 15 which you felt someone used an idea you had without your
14:42:52 16 permission or you were accused of using an idea without
14:42:57 17 permission?

18:00:00 18 (No response)

14:43:01 19 THE COURT: Have any of you ever been involved in or
14:43:05 20 worked for a company that was involved in a licensing a patent?

14:43:12 21 (Several jurors raise their hands)

14:43:12 22 THE COURT: Now, this case involves a patent dispute,
14:43:16 23 including issues of patent infringement and patent validity.

14:43:20 24 Have you, any of you, or any member of your family or
14:43:23 25 close friends known to you been involved in a patent dispute,

14:43:27 1 either as an individual or as part of a company?

18:00:00 2 (No response)

14:43:33 3 THE COURT: Do any of you have any opinions about
14:43:35 4 patents, patent rights, or the United States Patent and
14:43:40 5 Trademark Office that may make it difficult for you to be a
14:43:43 6 fair and impartial juror in this case?

14:43:46 7 (No response)

14:43:50 8 THE COURT: Do any of you work in the high-tech
14:43:53 9 industry?

14:43:57 10 (Several jurors raise their hands)

14:43:57 11 THE COURT: After all, you live in Austin.

14:44:01 12 Do any of you have any opinions about patents, patent
14:44:05 13 rights, or the United States Patent, and Trademark Office that
14:44:08 14 might make it difficult for you to be a fair and impartial
14:44:10 15 juror in this case?

14:44:12 16 (No response)

14:44:12 17 THE COURT: Do any of you have any particular
14:44:19 18 expertise in audio, video, or text messages or social media,
14:44:25 19 more than just being good at it?

18:00:00 20 (No response)

14:44:29 21 THE COURT: Now, if you're selected as a juror in
14:44:32 22 this case, you cannot discuss the case with your fellow jurors
14:44:36 23 before you are permitted to do so at the conclusion of trial,
14:44:40 24 or with anyone else until after a decision has been reached by
14:44:44 25 the jury. Therefore, you cannot talk about the case or

14:44:48 1 otherwise have any communications about the case with anyone,
14:44:52 2 including your fellow jurors, until I tell you that such
14:44:56 3 discussions may take place.

14:44:59 4 Thus, in addition to not having face-to-face
14:45:02 5 discussions with your fellow jurors or anyone else, you cannot
14:45:06 6 communicate with anyone about the case in any way, whether in
14:45:10 7 writing or through e-mail, text messaging, blogs, or comments,
14:45:15 8 or on social media, websites and apps like Twitter, Facebook,
14:45:20 9 Instagram, LinkedIn, Youtube, WhatsApp, GroupMe, Snapchat, and
14:45:28 10 TikTok. If you feel you cannot do this, then you cannot let
14:45:31 11 yourself become a member of the jury in this case.

14:45:34 12 Is there anyone who will not be able to comply with
14:45:37 13 this restriction? And by that I mean turning off your smart
14:45:41 14 phones and your means of electronic communication, knowing only
14:45:45 15 about this case from what you hear in the courtroom and the law
14:45:50 16 as I give it to you? Will everybody, if you're selected to the
14:45:54 17 jury, be willing and able to do that?

14:45:56 18 If you cannot do that, raise your hand for me.

18:00:00 19 (No response)

14:46:00 20 THE COURT: You also cannot conduct any type of
14:46:03 21 independent or personal research or investigation regarding any
14:46:08 22 matters related to this case. Therefore, you cannot use your
14:46:12 23 cell phones, iPads, computers, or any other device to do any
14:46:16 24 research or investigation regarding this case, the matters in
14:46:20 25 this case, the legal issues in this case, or the individuals or

14:46:24 1 entities in this case. And you must ignore any information
14:46:28 2 about this case that you may see, even accidentally, while
14:46:34 3 browsing on the Internet or on your social media feeds.

14:46:37 4 This is because you must -- pardon me.

14:46:41 5 This is because you must base the decision that you
14:46:44 6 will have to make in this case solely on what you hear and see
14:46:47 7 in this courtroom. If you feel that you cannot do this, then
14:46:52 8 you cannot let yourself become a member of the jury in this
14:46:55 9 case.

14:46:56 10 Is there anyone who would not be able to comply with
14:46:59 11 this restriction?

14:47:03 12 (No response)

14:47:03 13 Now, I have allocated the lawyers for each side an
14:47:07 14 opportunity to ask you questions. They will do their best to
14:47:15 15 stay within my time confines, but if you hear me say "thank
14:47:20 16 you" to one of them, it doesn't mean they've done anything
14:47:23 17 wrong. It's just their signal that they're going to have to
14:47:28 18 sit down because they've exhausted the time I've given them.

14:47:31 19 So at this time the attorney for each party will have
14:47:35 20 an opportunity to ask you questions. Please remember, as I
14:47:41 21 stated earlier, that the nature of some of the attorneys'
14:47:45 22 questions may seem intrusive, but I assure you that the lawyers
14:47:49 23 have no desire to pry into your backgrounds unnecessarily, but,
14:47:53 24 rather, are doing so to ensure that each of you can act
14:47:57 25 independently and without bias in serving as a juror in this

14:48:00 1 case. Further, the lawyers are given certain peremptory
14:48:04 2 strikes which they can exercise, and their questions will give
14:48:07 3 them information on which to base those strikes.

14:48:10 4 So please remember that if at any time you do not
14:48:14 5 want to publicly answer a question, you may approach the bench
14:48:18 6 and ask the question with only the court and the lawyers
14:48:22 7 present.

14:48:22 8 So at this time the plaintiff may ask questions of
14:48:28 9 the jury panel.

14:48:30 10 MR. THOMPSON: Thank you, Your Honor. May I get a
14:48:32 11 five-minute warning before my time?

14:48:34 12 THE COURT: You may.

14:48:35 13 MR. THOMPSON: Thank you. May it please the Court:

14:48:38 14 Good afternoon, ladies and gentlemen. Again, my name
14:48:41 15 is a Blake Thompson, and I'm one of the lawyers that has the
14:48:44 16 honor of representing Voxer and Mr. Tom Katis. I appreciate
14:48:49 17 you being here. I know there's probably places you'd rather be
14:48:52 18 or things you'd rather be doing, so we appreciate your time and
14:48:56 19 attention.

14:48:57 20 I know you've all filled out juror questionnaires and
14:49:00 21 been answering questions today, so it's probably only fair that
14:49:03 22 I give you a little bit of information about myself. I'm from
14:49:06 23 Texas, if you can't tell from my accent. I grew up in a small
14:49:09 24 town of Overton, Texas. I live in Tyler now. I'm married. I
14:49:14 25 have one son who is almost 8 years old, but he thinks he's

14:49:17 1 almost 18 years old. I went to school right down the road in
14:49:21 2 Waco. So any of you that are diehard Longhorns, I hope you
14:49:26 3 won't hold that against me.

14:49:27 4 I have a few questions for you, and it's my opinion
14:49:30 5 that all of us have opinions and feelings and biases that we've
14:49:34 6 just garnered from our personal life experiences. And so the
14:49:39 7 point of these questions really are just to determine if you
14:49:41 8 have any of those particular opinions or biases or feelings
14:49:46 9 that might make it difficult for you to decide this case based
14:49:50 10 solely on the evidence that's going to be provided. There's no
14:49:54 11 right or wrong answers. I just need to get to know you a
14:49:58 12 little bit so we can make our decision. Okay?

14:50:00 13 First question I have for the panel is: Have you or
14:50:02 14 a close family member or close friend ever worked for an
14:50:06 15 insurance company? If you have, please raise your hand.

14:50:09 16 (No response)

14:50:09 17 MR. THOMPSON: Okay. A little different twist on
14:50:12 18 that: Have you or a family member or close friend ever worked
14:50:16 19 in what's sometimes referred to as risk management or claims
14:50:20 20 for a company? Anyone?

14:50:21 21 (No response)

14:50:23 22 MR. THOMPSON: Okay. I see no hands.

14:50:25 23 Now, I know you were asked in your questionnaire your
14:50:28 24 feelings about lawsuits, and Judge Yeakel has asked you a
14:50:32 25 little bit about that, too. But I have a few more questions

14:50:36 1 about that. Who here thinks just as a whole there are too many
14:50:38 2 lawsuits in our country? If you believe that, please raise
14:50:41 3 your hand. And keep them up for just a second so I can kind of
14:50:45 4 mark who you are, okay?

14:50:50 5 Okay. Now, for those of you that raised your hand, I
14:51:01 6 know we live in a world where we're watching TV, there's
14:51:05 7 lawyers advertising; we're on the Internet, there's lawyers
14:51:08 8 advertising; we're driving down the freeway, there's lawyers on
14:51:10 9 the billboard. Lawyers everywhere, okay?

14:51:13 10 Who, when you're saying there's too many lawsuits in
14:51:16 11 this country, really you're thinking about personal injury type
14:51:19 12 lawsuits? Raise hand if that's really what you're referring
14:51:23 13 to? Okay. Keep them up for me if you don't mind just so I can
14:51:27 14 see.

14:51:31 15 All right. Now, there's no such thing as "patent
14:51:36 16 police." So my client, the only option we have to redress
14:51:40 17 their wrong is to come here to the courthouse. So is there
14:51:45 18 anybody here that thinks there's just too many patent lawsuits,
14:51:47 19 lawsuits over a patent?

14:51:49 20 Okay. Mr. Champlin; is that correct?

14:51:54 21 MR. THOMPSON: Okay. I have a question for you. Can
14:52:02 22 you tell me little bit more about that, why you have that
14:52:05 23 feeling?

14:52:06 24 JUROR CHAMPLIN: I've looked at lots of software
14:52:09 25 patent because I'm a software developer, or was. And I feel

14:52:15 1 like it's maybe less a problem with the legal system but more a
14:52:18 2 problem with the Patent Office. I don't think they really
14:52:21 3 understand what is novel and not in the software industry.

14:52:28 4 MR. THOMPSON: Okay. And I think you also mentioned
14:52:30 5 that you had an issue with the Patent and Trademark Office. Is
14:52:32 6 that what you're talking about?

14:52:34 7 JUROR CHAMPLIN: Yes. I've had personal issue with
14:52:37 8 the Patent and Trademark Office, yes.

14:52:41 9 MR. THOMPSON: You kind of have an issue with the way
14:52:44 10 the system works. Is that fair?

14:52:45 11 JUROR CHAMPLIN: Yes.

14:52:46 12 MR. THOMPSON: Would those issues and your beliefs
14:52:48 13 prevent you from being able to be a fair and impartial juror on
14:52:51 14 this case?

14:52:52 15 JUROR CHAMPLIN: No.

14:52:53 16 MR. THOMPSON: Okay. All right. Thank you,
14:52:55 17 Mr. Champlin.

14:53:04 18 Mrs. Albright. I think she's on the front row here.

14:53:09 19 Ms. Albright, from your response to questionnaire, I
14:53:12 20 couldn't really determine if you were familiar with Voxer or
14:53:15 21 not. Are you familiar with Voxer?

14:53:17 22 JUROR ALBRIGHT: No.

14:53:18 23 MR. THOMPSON: Okay. So I think that, if I read this
14:53:19 24 right, you put a one as unfavorable for Voxer in your response.
14:53:24 25 Was that just unintentional or you just had no idea who Voxer

14:53:28 1 is?

14:53:29 2 JUROR ALBRIGHT: That was unintentional.

14:53:31 3 MR. THOMPSON: Okay. Thank you. I appreciate that.
14:53:33 4 You can sit down.

14:53:33 5 Ms. Beebe. Did I pronounce your name right?

14:53:43 6 JUROR BEEBE: Yes.

14:53:44 7 MR. THOMPSON: Okay. Sorry. Ms. Beebe, I think in
14:53:47 8 some of your responses you describe yourself as very tech
14:53:50 9 savvy; is that right?

14:53:51 10 JUROR BEEBE: Yes.

14:53:52 11 MR. THOMPSON: Okay. Can you -- it's not a trick
14:53:54 12 question. Can you -- can you kind of tell me why you consider
14:53:57 13 yourself pretty tech savvy.

14:54:00 14 JUROR BEEBE: I use technology a lot, but it's not
14:54:02 15 for work. Well, it is in a teaching standpoint. I'm a
14:54:06 16 teacher. So in that light I use technology a lot, and then
14:54:12 17 also in social media.

14:54:13 18 MR. THOMPSON: What do you teach?

14:54:13 19 JUROR BEEBE: I teach art and work at a private
14:54:15 20 school.

14:54:16 21 MR. THOMPSON: Okay. Thank you very much. I
14:54:18 22 appreciate it.

14:54:20 23 Mr. Chang. I should have said it quicker, and you
14:54:25 24 could have gotten the microphone quicker.

14:54:27 25 Mr. Chang, I believe that in your responses to the

14:54:30 1 questionnaire, that you indicated that you've used the Voxer
14:54:32 2 app; is that right?

14:54:34 3 JUROR CHANG: Correct.

14:54:35 4 MR. THOMPSON: Can you tell me a little bit about
14:54:36 5 that? Do you currently use it?

14:54:38 6 JUROR CHANG: I don't currently use it. This was
14:54:40 7 probably sometime last year. It was at my gym. It was a way
14:54:44 8 for the coaches to stay in communication with participants
14:54:50 9 during training sessions, and it was only for maybe a
14:54:54 10 three-month period, and I believe the app after that was over.

14:55:01 11 MR. THOMPSON: How would you describe your experience
14:55:03 12 with that? Did you like it? Did you not like it? What?

14:55:05 13 JUROR CHANG: Neutral. I mean, it's -- yeah.
14:55:09 14 Neutral.

14:55:09 15 MR. THOMPSON: Okay. I noticed I think in your
14:55:10 16 background that you have a lot of experience in design; is that
14:55:13 17 right? Maybe games and such?

14:55:14 18 JUROR CHANG: Correct.

14:55:15 19 MR. THOMPSON: All right. With your level of
14:55:19 20 expertise and your background in technology, would you have any
14:55:21 21 problem -- because I'll tell you in this case there's going to
14:55:23 22 be experts on both sides talking about both sides' positions.
14:55:27 23 Would you have any problem listening to those experts and not
14:55:31 24 just looking at your own personal background when making a
14:55:35 25 decision as a juror?

14:55:36 1 JUROR CHANG: Yeah. I don't think I would have a
14:55:40 2 problem, no.

14:55:41 3 MR. THOMPSON: Okay. And my point is, basically,
14:55:44 4 that you don't feel like, with your level of expertise, that
14:55:46 5 you might ignore or not pay attention that closely to the
14:55:50 6 experts and rely more on your personal experience.

14:55:53 7 JUROR CHANG: This domain is not my area of focus, so
14:55:57 8 I wouldn't have a problem.

14:55:59 9 MR. THOMPSON: Okay. Fair enough. Thank you so
14:56:02 10 much.

14:56:03 11 Ms. Estes. Ms. Estes, I think your response to some
14:56:14 12 of the questionnaire questions, you indicated you don't use
14:56:16 13 Facebook or Instagram; is that correct?

14:56:19 14 JUROR ESTES: That is correct.

14:56:21 15 MR. THOMPSON: Now, I think your job is at H-E-B in
14:56:26 16 marketing and so forth; is that correct?

14:56:26 17 JUROR ESTES: Okay.

14:56:26 18 MR. THOMPSON: Do you not use any social media as
14:56:28 19 part of your job or anything of that nature?

14:56:30 20 JUROR ESTES: I mean, obviously, H-E-B uses social
14:56:33 21 media and I have a team in San Antonio that uses social media
14:56:38 22 from an advertising perspective. But for me, personally, I'm
14:56:41 23 not directly involved in that.

14:56:43 24 MR. THOMPSON: Do you oversee that team that is doing
14:56:46 25 that work?

14:56:46 1 JUROR ESTES: I do not.

14:56:48 2 MR. THOMPSON: Thank you. I appreciate it.

14:56:50 3 Mr. Ilango? Did I pronounce your name correctly.

14:56:53 4 JUROR ILANGO: Yes.

14:56:54 5 THE COURT: Okay. Thank you. You indicated that you

14:56:56 6 have a background in developing products; is that right?

14:57:00 7 JUROR ILANGO: Yes.

14:57:00 8 MR. THOMPSON: Can you tell us little more about

14:57:03 9 that?

14:57:03 10 JUROR ILANGO: I'm involved in system design and

14:57:05 11 design of semiconductor chips.

14:57:09 12 MR. THOMPSON: Have you ever had any of your

14:57:11 13 inventions patented?

14:57:12 14 JUROR ILANGO: Yes.

14:57:13 15 MR. THOMPSON: How many?

14:57:14 16 JUROR ILANGO: Maybe a dozen.

14:57:16 17 MR. THOMPSON: Okay. You also indicated, I think,

14:57:18 18 that maybe you were in a small claims -- had a small claims

14:57:23 19 court case; is that right?

14:57:24 20 JUROR ILANGO: Yes.

14:57:25 21 MR. THOMPSON: For an automobile; is that right?

14:57:27 22 JUROR ILANGO: Yes.

14:57:28 23 MR. THOMPSON: Were you the claimant or defendant or

14:57:30 24 what?

14:57:31 25 JUROR ILANGO: I was the defendant.

14:57:33 1 MR. THOMPSON: Okay. Thank you very much,
14:57:35 2 Mr. Ilango.

14:57:37 3 Ms. Lancaster. Hi. I believe on your questionnaire
14:57:42 4 you indicated that either you or maybe your significant other
14:57:46 5 had some military experience; is that right?

14:57:50 6 JUROR LANCASTER: I served in the Army, yes.

14:57:51 7 MR. THOMPSON: You served in the Army. How long were
14:57:55 8 you in the Army?

14:57:55 9 JUROR LANCASTER: Three years.

14:57:56 10 MR. THOMPSON: How long ago was that?

14:57:58 11 JUROR LANCASTER: Over 20 years ago.

14:58:00 12 MR. THOMPSON: That was a bad question of me to ask
14:58:02 13 you. I'm sorry. Thank you very much. I appreciate you.

14:58:04 14 Mrs. Moore-Cation. We'll let the microphone get to
14:58:15 15 you. I think -- and, now, people were raising their hand
14:58:18 16 pretty quickly and putting them down, so I want to make sure I
14:58:21 17 have this right. Did you indicate that you have a patent or
14:58:24 18 that you had applied for a patent?

14:58:25 19 JUROR MOORE-CATION: Well, I worked for a company in
14:58:27 20 the Bay Area. They were a material science company. And I was
14:58:32 21 the product manager for a new polymer-based overcurrent
14:58:37 22 protection device, and we did file for a patent for that
14:58:40 23 product.

14:58:40 24 MR. THOMPSON: Okay. And you were just involved in
14:58:42 25 that process, I guess?

14:58:43 1 JUROR MOORE-CATION: I was involved in the process,
14:58:44 2 yes.

14:58:45 3 MR. THOMPSON: Okay. Now, you also indicated, I
14:58:48 4 think, there's a number of lawyers in your family; is that
14:58:51 5 right?

14:58:51 6 JUROR MOORE-CATION: There are.

14:58:52 7 MR. THOMPSON: So your dad is a judge; is that right?

14:58:54 8 JUROR MOORE-CATION: Was a state judge.

14:58:56 9 MR. THOMPSON: Okay. And where was that?

14:58:57 10 JUROR MOORE-CATION: 120th District Court in El Paso.

14:59:00 11 MR. THOMPSON: Okay. And what kind of law did he
14:59:03 12 practice before he went on the bench?

14:59:03 13 JUROR MOORE-CATION: Criminal.

14:59:04 14 MR. THOMPSON: And who else? I think you had a few
14:59:06 15 other family members who are lawyers. Can you tell me about
14:59:09 16 those.

14:59:09 17 JUROR MOORE-CATION: Yes. A couple of uncles, also
14:59:11 18 criminal law.

14:59:12 19 MR. THOMPSON: Okay.

14:59:13 20 JUROR MOORE-CATION: A nephew who has currently just
14:59:16 21 graduated, in fact, so I'm not sure what direction he's going.
14:59:19 22 But he's also an attorney.

14:59:20 23 MR. THOMPSON: Where did he graduate from?

14:59:22 24 JUROR MOORE-CATION: NYU.

14:59:24 25 MR. THOMPSON: NYU. Okay. I think you indicated

14:59:27 1 you've worked at a number of law offices; is that right?

14:59:29 2 JUROR MOORE-CATION: I have, during high school and
14:59:30 3 college. And while I was at UT, I worked for some mostly
14:59:34 4 research assistant positions.

14:59:36 5 MR. THOMPSON: Were those law firms mostly criminal
14:59:39 6 law firms or civil or a mix?

14:59:40 7 JUROR MOORE-CATION: It was a mix, but primarily
14:59:43 8 criminal.

14:59:43 9 MR. THOMPSON: Okay. All right. Did you ever work
14:59:46 10 for any law firms that did civil litigation, either on the
14:59:50 11 plaintiff's side or the defense' side?

14:59:52 12 JUROR MOORE-CATION: Yes. But it was a long time
14:59:55 13 ago.

14:59:56 14 MR. THOMPSON: Okay. You don't recall who those
14:59:58 15 were?

14:59:58 16 JUROR MOORE-CATION: I don't.

14:59:59 17 MR. THOMPSON: Okay. Thank you. I think you also
15:00:01 18 indicated that your husband had developed or started several
15:00:04 19 technology businesses; is that right?

15:00:06 20 JUROR MOORE-CATION: That is correct.

15:00:07 21 MR. THOMPSON: Can you tell us about those?

15:00:09 22 JUROR MOORE-CATION: Yes. They are -- he is a
15:00:11 23 software designer and has been the founder of three software
15:00:16 24 startup companies. He currently runs two of those, and I am
15:00:21 25 contributor, not a paid employee.

15:00:25 1 MR. THOMPSON: Okay. All right. Thank you very
15:00:28 2 much. I appreciate it.

15:00:29 3 Ms. Nelson. Well, Ms. Nelson, I really don't have
15:00:40 4 any questions for you. I guess I was blank. I was just moving
15:00:43 5 along. Does that make your day?

15:00:45 6 JUROR NELSON: It does.

15:00:46 7 MR. THOMPSON: Okay. Thank you. I do have some
15:00:48 8 questions for Mr. Ridley. I believe in your questionnaire that
15:01:00 9 you listed that your brother is an attorney; is that right?

15:01:03 10 JUROR RIDLEY: Correct.

15:01:04 11 MR. THOMPSON: And where does he practice?

15:01:05 12 JUROR RIDLEY: In Georgia.

15:01:07 13 MR. THOMPSON: Do you know what kind of law he
15:01:09 14 practices?

15:01:10 15 JUROR RIDLEY: General practice.

15:01:11 16 MR. THOMPSON: Okay. All right. I think you also
15:01:12 17 have started your own business. You are a financial planner;
15:01:15 18 is that right?

15:01:15 19 JUROR RIDLEY: Correct.

15:01:16 20 MR. THOMPSON: Can you tell us a little bit more
15:01:18 21 about starting your own business? How you did it, when you did
15:01:22 22 it, that sort of thing?

15:01:23 23 JUROR RIDLEY: Sure. Yeah. Just filed with the
15:01:26 24 State, the LLC, and had to process the -- become a registered
15:01:31 25 investment advisor with the State as well. Through my

15:01:35 1 experience with financial planning, investments, kind of saw a
15:01:39 2 need for a specific service within the church world. And so I
15:01:45 3 started my own firm six months ago.

15:01:48 4 MR. THOMPSON: And when you say church work, do you
15:01:50 5 cater to some certain area or demographic?

15:01:53 6 JUROR RIDLEY: To churches, specifically.

15:01:55 7 MR. THOMPSON: Thank you very much. I appreciate
15:01:57 8 you.

15:01:57 9 Ms. Rudolphi. I know you indicated you were a juror
15:02:07 10 on a couple of cases; is that right?

15:02:08 11 JUROR RUDOLPHI: Yes.

15:02:09 12 MR. THOMPSON: But I think I noticed in your
15:02:11 13 information that you're also a member of a class action; is
15:02:13 14 that right?

15:02:13 15 JUROR RUDOLPHI: Yes. Uh-huh.

15:02:15 16 MR. THOMPSON: Can you tell me a little bit about
15:02:16 17 that?

15:02:16 18 JUROR RUDOLPHI: Yes. I worked for Toys"R"Us for 26
15:02:20 19 years, and we were released, of course, when they went bankrupt
15:02:24 20 without severance. So there was class action lawsuit filed for
15:02:27 21 severance pay, and I was a part of that.

15:02:28 22 MR. THOMPSON: Okay. Have you been involved in any
15:02:29 23 other lawsuits?

15:02:30 24 JUROR RUDOLPHI: I don't think so, no.

15:02:32 25 MR. THOMPSON: All right. Thank you.

15:02:34 1 JUROR RUDOLPHI: You're welcome.

15:02:36 2 MR. THOMPSON: And Mr. Rylie, good afternoon.

15:02:42 3 JUROR RYLIE: Good afternoon.

15:02:44 4 MR. THOMPSON: I understand you worked for NXP or you

15:02:47 5 retired from NXP; is that right?

15:02:50 6 JUROR RYLIE: Thirty-two years.

15:02:52 7 MR. THOMPSON: And I believe you were a maintenance

15:02:54 8 technician; is that right?

15:02:55 9 JUROR RYLIE: That's correct.

15:02:56 10 MR. THOMPSON: Can you tell us a little bit about

15:02:57 11 what that job was and what you did on a daily basis?

15:02:59 12 JUROR RYLIE: I mainly maintained the semiconductor

15:03:03 13 machines -- *[unintelligible]*.

15:03:07 14 MR. THOMPSON: Can you say that again? I think you

15:03:09 15 kind of cut out. Technology. You know how that goes.

15:03:12 16 JUROR RYLIE: *[Unintelligible]*.

15:03:17 17 MR. THOMPSON: I'm hearing you, but I'm not sure the

15:03:19 18 court reporter can.

15:03:38 19 JUROR RYLIE: I did maintenance on the semiconductor

15:03:43 20 equipment that makes the wafers.

15:03:46 21 MR. THOMPSON: Okay. Okay. All right. Thank you

15:03:48 22 very much. Appreciate you.

15:03:56 23 Ms. Lewis. Now, Ms. Lewis, I think I noticed in your

15:04:02 24 questionnaire that you said you have a real distrust of social

15:04:05 25 media companies. You had some opinions about that. Can you

15:04:09 1 tell me about that?

15:04:10 2 JUROR LEWIS: That's correct. I would say that
15:04:12 3 pretty much sums it up. I have a very strong bias against
15:04:15 4 social media, Facebook, particularly.

15:04:18 5 MR. THOMPSON: Okay. All right. Okay. Thank you
15:04:20 6 very much. All right.

15:04:24 7 Now, just to everyone, another question for the
15:04:26 8 entire panel, so you can raise your hand if it applies to you.

15:04:29 9 Is there any of you who would have a problem sitting
15:04:33 10 on a jury, regardless of the type of case it is, whether it's a
15:04:37 11 patent case or any other kind of case, where you're asked to
15:04:40 12 award potentially tens of millions or hundreds of millions of
15:04:44 13 dollars? Just where that amount of money is a lot, and you
15:04:47 14 would just have a problem considering that, no matter what the
15:04:50 15 facts are. Does anyone -- anyone have a problem with that? If
15:04:53 16 you do, raise your hand.

15:04:56 17 (No response)

15:04:56 18 MR. THOMPSON: Okay. I see no hands.

15:04:58 19 Is there anyone here who just has sort of fundamental
15:05:01 20 distrust of the government, just such that you feel like, if
15:05:06 21 the government's involved in the process, whatever that is,
15:05:09 22 it's probably messed up or screwed up or whatever because the
15:05:12 23 government is involved in it? Does anyone here have a distrust
15:05:15 24 in the government such that just anything they were involved
15:05:17 25 in, you would question it, to put it another way? Anyone?

15:05:21 1 (No response)

15:05:21 2 THE COURT: Okay. I see no hands.

15:05:24 3 All right. Who here considers yourself a leader? If
15:05:27 4 you're in a situation and put in with a group of people, you're
15:05:31 5 the type of person that kind of takes charge, whatever it is,
15:05:33 6 and -- and moves forward.

15:05:35 7 Okay one hand. Ms. Beebe; is that right, and Ms. --
15:05:39 8 Ms. Estes. Okay. Let me talk to Ms. Beebe first. Okay,
15:05:50 9 Ms. Beebe, I'm going to put you on the spot again.

15:05:52 10 Tell me why you think you're a leader -- consider
15:05:55 11 yourself a leader?

15:05:56 12 JUROR BEEBE: I'm in a lot of leadership positions.
15:06:00 13 I teach at school, and I'm the leader of my department, based
15:06:04 14 on I'm the only person in my department, so I'm in charge of
15:06:08 15 running the art program at the school that I'm at. Also, at
15:06:12 16 the old school that I was at, I was also the only art teacher,
15:06:16 17 so I was over the entire department and built the program from
15:06:20 18 scratch. Also I lead high school girls at my church.

15:06:25 19 MR. THOMPSON: Okay. And what's the name of the
15:06:27 20 school that you teach?

15:06:28 21 JUROR BEEBE: I work at San Marcos Academy.

15:06:32 22 MR. THOMPSON: Okay. Thank you very much, Ms. Beebe.
15:06:34 23 I appreciate you. Can you pass that down to Ms. Estes?

15:06:40 24 Okay, Ms. Estes, I'm putting you on the spot, too. I
15:06:43 25 already know you're leading people at H-E-B, but tell me why

15:06:46 1 you consider yourself a leader.

15:06:49 2 JUROR ESTES: Mostly because of that, 38 years with
15:06:51 3 H-E-B, running stores, director of operations for Central
15:06:55 4 Texas, and now I'm the director of marketing and merchandising
15:06:58 5 for the 56 stores here in Central Texas. I have a team of
15:07:02 6 about 20 people reporting to me.

15:07:04 7 MR. THOMPSON: Okay. Twenty people, and you're over
15:07:06 8 about 56 stores?

15:07:08 9 JUROR ESTES: Yeah. Yes, sir.

15:07:09 10 MR. THOMPSON: Okay. Thank you very much. I
15:07:11 11 appreciate you.

15:07:21 12 Mr. Shultz. Mr. Shultz, I think in your
15:07:29 13 questionnaire that there's a question about legal cases and
15:07:35 14 such, and you indicated you work for Dell, I believe; is that
15:07:39 15 right?

15:07:40 16 JUROR SHULTZ: That's correct.

15:07:41 17 MR. THOMPSON: And you couldn't speak to any cases on
15:07:43 18 behalf of Dell. Is that because you are involved in them and
15:07:46 19 it's confidential, or it's because you don't know about any
15:07:48 20 cases they're involved in?

15:07:49 21 JUROR SHULTZ: Both, actually. I'm not involved in
15:07:51 22 that department, and I'm not able to speak on their behalf as a
15:07:55 23 spokesman.

15:07:56 24 MR. THOMPSON: Okay. But you're not involved in,
15:07:58 25 like, the legal cases for Dell; is that right?

15:08:00 1 JUROR SHULTZ: That's correct.

15:08:02 2 MR. THOMPSON: Okay. All right. Thank you very
15:08:03 3 much. Oh, wait. One other question. I think you also
15:08:06 4 indicated that you had -- is it your spouse that works in a
15:08:08 5 police role or something like that? Can you tell me about
15:08:10 6 that?

15:08:10 7 JUROR SHULTZ: Yeah. Police communications
15:08:12 8 supervisor. Also a dispatcher for University of Texas.

15:08:17 9 MR. THOMPSON: Okay. All right. Thank you very
15:08:19 10 much.

15:08:21 11 All right. I believe that's all the questions I
15:08:26 12 have.

15:08:27 13 One other last question. See, that was a trick. One
15:08:30 14 other last question. Judge Yeakel has asked you a lot of
15:08:35 15 questions; I've asked you a lot of question. But is there
15:08:37 16 anyone sitting here on this panel today that is sitting there
15:08:41 17 thinking, If told him about X, whatever it is, it would
15:08:44 18 probably mean I -- he would probably need to know that to
15:08:48 19 decide whether or not I'd be a good juror for this case?

15:08:51 20 Is there anything that you just need to share with us
15:08:53 21 that you feel like we should know before choosing who is going
15:08:56 22 to be the jurors in this case? Anyone?

18:00:00 23 (No response)

15:09:00 24 MR. THOMPSON: Okay. All right. Well, I appreciate
15:09:03 25 you, I thank you for your time, and we look forward to

15:09:06 1 presenting our case to the eight of you that are chosen.

15:09:12 2 Thank you.

15:09:13 3 THE COURT: You may proceed.

15:09:14 4 MR. JONES: Thank you, Your Honor.

15:09:17 5 Again, my name is Mike Jones. It is indeed my
15:09:20 6 privilege in this case to represent Meta. As you've been told,
15:09:23 7 they were formally known as Facebook. I'm probably going to
15:09:27 8 just refer to them as Facebook because in all the documents and
15:09:32 9 a lot of things you'll, see you'll hear everything talking
15:09:35 10 about Facebook and we know them as Facebook. So that's what I
15:09:39 11 will do, if it's okay with you. I also represent Instagram,
15:09:44 12 and it's my privilege to do so.

15:09:45 13 In this particular case, the first thing I want to do
15:09:49 14 on behalf of Facebook and Instagram is to thank you for coming
15:09:56 15 here as jurors. I appreciate the time you're spending here,
15:10:00 16 and I appreciate the time those of you who are selected as
15:10:03 17 jurors will spend in this case. It's important time because
15:10:06 18 this is an important resolution that needs to be decided
15:10:10 19 between these parties. I thank you for doing that. I also
15:10:14 20 thank you for the time you've already spent in filling out the
15:10:16 21 questionnaires, because it does make things go much more
15:10:20 22 smoothly.

15:10:20 23 And I do have a few questions that I want to ask you
15:10:24 24 to follow up on things that you said in the questionnaire
15:10:28 25 initially. But before I do that, the judge asked you if you

15:10:32 1 had personal dealings with the Patent and Trademark Office and
15:10:36 2 also if you've had personal dealings either in applying or
15:10:40 3 owning patents. And, unfortunately, I'm old. I don't move
15:10:45 4 quickly, and I didn't get everybody's hand written down of
15:10:50 5 those of you that raised your hand for that.

15:10:52 6 So could I ask that question one more time and ask
15:10:56 7 everybody to raise their hand, because I would like to talk to
15:10:58 8 you each a little bit about those experiences that you have had
15:11:03 9 with the patent office and have had experiences applying and
15:11:07 10 owning patents.

15:11:08 11 So, if you would, would you raise your hands? Thank
15:11:13 12 you. And I'll start out with you, Mrs. Moore-Cation. And I
15:11:24 13 think you've already told us a little bit about those
15:11:26 14 experiences, right?

15:11:27 15 JUROR MOORE-CATION: Correct.

15:11:28 16 MR. JONES: And that your husband has been involved
15:11:29 17 in that company that develops software products, correct?

15:11:33 18 JUROR MOORE-CATION: Multiple companies, yes.

15:11:35 19 MR. JONES: Multiple companies. My question to you
15:11:37 20 is this: Is there anything about those experiences that you've
15:11:39 21 had or you've heard about from your husband that would cause
15:11:41 22 you to lean one way or the other as we enter into this case?

15:11:45 23 JUROR MOORE-CATION: No.

15:11:46 24 MR. JONES: Okay. Thank you so much. Who is next on
15:11:49 25 the first row? Yes, sir. That would be Mr. Ziaja. Did I

15:11:55 1 pronounce that right?

15:11:55 2 JUROR ZIAJA: Ziaja.

15:11:58 3 MR. JONES: I apologize. Anyway, could you tell me a
15:12:01 4 little bit about your experiences?

15:12:03 5 JUROR ZIAJA: So I think the question he asked was
15:12:05 6 family members, too. I applied for one patent when I worked at
15:12:09 7 IBM, but I was not granted one. And then my son worked for
15:12:13 8 Paypal, and I think he was granted 12 or 13 patents in Paypal.
15:12:16 9 And then I have a brother who was granted several patents at --
15:12:21 10 for Sun and for Oracle Joan.

15:12:26 11 MR. JONES: Thank you, sir. I appreciate that. My
15:12:29 12 question to you would be the same that I just asked a moment
15:12:31 13 ago. Is there anything about those experiences, either what
15:12:34 14 you heard about from your son or others, or what you personally
15:12:38 15 experienced, that would cause you to lean one way or the other
15:12:40 16 as we begin this case?

15:12:41 17 JUROR ZIAJA: No.

15:12:43 18 MR. JONES: Thank you, sir. I appreciate it.

15:12:44 19 Next on the first row that would answer yes to that
15:12:47 20 question? Anybody else on the first row had dealings with the
15:12:52 21 patent office in either applying or owning patents?

15:12:55 22 Thank you. So we can go to the next row, who would
15:12:59 23 answer yes to that question? Yes, sir. I think that is
15:13:02 24 Mr. Smith, right?

15:13:03 25 JUROR SMITH: Yes.

15:13:05 1 MR. JONES: Jones and Smith. All right. Yes, sir.

15:13:08 2 Could you tell me about your experiences in that regard.

15:13:11 3 JUROR SMITH: I've applied for several U.S. patents.

15:13:14 4 MR. JONES: And what type of patents?

15:13:16 5 JUROR SMITH: Electromechanical devices, not software

15:13:19 6 related.

15:13:20 7 MR. JONES: Thank you. And how many, sir?

15:13:23 8 JUROR SMITH: Three.

15:13:24 9 MR. JONES: Three. Thank you, sir. And is there

15:13:26 10 anything about those experiences that would cause you to lean

15:13:29 11 any way or the other as we start this case?

15:13:32 12 JUROR SMITH: No.

15:13:34 13 MR. JONES: Thank you, sir. I appreciate it.

15:13:36 14 Anybody else on the second row that's had experiences

15:13:38 15 applying for and owning patents? Yes, sir. And that would be

15:13:43 16 Mr. Rylie?

15:13:45 17 JUROR ILANGO: Ilango.

15:13:47 18 MR. JONES: Okay. Thank you, sir. Juror 13, I

15:13:50 19 believe, right, sir?

15:13:52 20 JUROR ILANGO: Fourteen.

15:13:54 21 THE COURT: Thank you. Mr. Ilango. I apologize.

15:13:58 22 And can you tell me a little bit about your experiences.

15:13:59 23 JUROR ILANGO: As part of working for my company, I

15:14:02 24 have applied for several patents and received a dozen.

15:14:09 25 MR. JONES: And what type of patents did you receive?

15:14:12 1 JUROR ILANGO: Electronics design.

15:14:19 2 MR. JONES: Thank you, sir.

15:14:19 3 JUROR ILANGO: And electrical software.

15:14:19 4 MR. JONES: Thank you, sir. And is there anything

15:14:20 5 about that experience that would cause you to lean one way or

15:14:23 6 the other as we begin this case?

15:14:25 7 JUROR ILANGO: No.

15:14:27 8 MR. JONES: Thank you, sir. I appreciate it.

15:14:28 9 And then anybody else on the second row?

18:00:00 10 (No response)

15:14:36 11 MR. JONES: Anybody else on the third row?

15:14:38 12 (No response)

15:14:38 13 MR. JONES: Thank you so much.

15:14:43 14 Now, I know that you all have -- while we're talking

15:14:45 15 about the patent office, I know that you've all watched the

15:14:48 16 film, the federal judiciary film that talks about patent

15:14:52 17 lawsuits. And one of the things that was stated in the film

15:14:57 18 that the judge had you look at was the fact that one of the

15:15:01 19 issues in a case involving patent infringement may be whether

15:15:05 20 or not the patent is valid. And I think that may happen in

15:15:10 21 this case with regard to one of the patents in this case, the

15:15:13 22 '557 case.

18:00:00 23 Now, do any of you think it's unfair that a jury

18:00:00 24 might be called upon to look at evidence and to consider

18:00:00 25 evidence and decide whether or not a patent is valid? Do any

18:00:00 1 of you think that's unfair and we shouldn't operate that way?

18:00:00 2 Anybody?

18:00:00 3 (No response)

15:15:36 4 MR. JONES: The film also said that -- that there
15:15:40 5 were numerous reasons why that was the case. But one of the
15:15:45 6 reasons the film said was because jurors like yourselves, if
15:15:49 7 you were chosen and selected to look at the evidence in this
15:15:52 8 case, might consider evidence that the patent office did not
15:15:57 9 consider; that jurors may see things, for example, prior art or
15:16:03 10 prior inventions, that had not been seen by the patent office.

15:16:07 11 Does anybody think that's unfair?

18:00:00 12 (No response)

15:16:11 13 MR. JONES: Anybody? Thank you. I assume by your
15:16:14 14 silence you do not.

15:16:26 15 If we could go to Juror Number 4, Mr. Ziaja. And I
15:16:33 16 just said your name wrong again. Tell me one more.

15:16:36 17 JUROR ZIAJA: Ziaja.

15:16:39 18 MR. JONES: Ziaja. I apologize. I really do.

15:16:41 19 I noticed in reviewing your questionnaires that you
15:16:43 20 were part of developing a startup company in the 1990s.

15:16:50 21 JUROR ZIAJA: Yes.

15:16:51 22 MR. JONES: Right, sir?

15:16:52 23 JUROR ZIAJA: Yes, sir.

15:16:54 24 MR. JONES: Could you describe that experience to me
15:16:56 25 a little bit.

15:16:57 1 JUROR ZIAJA: It was a telecommunications support
15:16:59 2 company that did work -- we had contracts with La Quinta
15:17:04 3 Hotels, with Arizona Public Service, and then we got venture
15:17:08 4 funding from Austin Ventures and we sold it off to a company
15:17:11 5 out of Atlanta.

15:17:13 6 MR. JONES: Thank you, sir. Is there anything about
15:17:16 7 those experiences that would cause you to lean one way or the
15:17:19 8 other as we start this case?

15:17:20 9 JUROR ZIAJA: No.

15:17:21 10 MR. JONES: Thank you. I appreciate it.

15:17:23 11 And if we could, Ms. Rudolphi?

15:17:32 12 JUROR RUDOLPHI: Rudolphi.

15:17:34 13 MR. JONES: I'm sorry. I'm not winning today.

15:17:40 14 And besides apologizing for mispronouncing your name,
15:17:43 15 with regard to the class action suit you were involved in, were
15:17:46 16 you the class representative?

15:17:48 17 JUROR RUDOLPHI: Oh, no.

15:17:50 18 MR. JONES: Okay. Thank you, ma'am.

15:18:01 19 And, if we could, I'd like to ask Ms. Powell a
15:18:05 20 question, Juror 18.

15:18:10 21 JUROR POWELL: Hello.

15:18:11 22 MR. JONES: How are you today?

15:18:14 23 JUROR POWELL: Good.

15:18:15 24 MR. JONES: Good. I noted that you were a service
15:18:17 25 delivery manager for Cisco for 16 years, if I got it right.

15:18:21 1 Could you describe that job for us, please, ma'am.

15:18:23 2 JUROR POWELL: I interfaced with customers and with
15:18:26 3 our network operations center with a product that we sold. And
15:18:32 4 I basically made sure that we delivered the service that we --
15:18:36 5 that they contracted for.

15:18:37 6 MR. JONES: Thank you, ma'am. I appreciate it.

15:18:51 7 Could we go to Mr. Smith, Juror 19. You told me a
15:18:57 8 little bit about your involvement in patent applications and
15:19:01 9 obtaining patents, right, sir?

15:19:02 10 JUROR POWELL: Yes, sir.

15:19:03 11 MR. JONES: Jones I also noticed, I've gone back
15:19:06 12 looking at my notes on your questionnaire, and it said that
15:19:08 13 while you were at PGS, my team and I supported multiple
15:19:12 14 application cases, prior art claims, and other technical
15:19:15 15 support. Can you tell me what that means?

15:19:17 16 JUROR SMITH: Sure. So I led an engineering division
15:19:19 17 that was responsible for all the technical support for our
15:19:22 18 legal team for patent applications, defenses, prior art
15:19:26 19 research, et cetera.

15:19:27 20 MR. JONES: Thank you, sir. I appreciate it.

15:19:37 21 And if we could go to Juror 22, Ms. Rodriguez?

15:19:45 22 JUROR RODRIGUEZ: Yes.

15:19:46 23 MR. JONES: I note that you were a science teacher at
15:19:49 24 one time, right?

15:19:50 25 JUROR RODRIGUEZ: Correct.

15:19:53 1 MR. JONES: Could you tell me what subjects you
15:19:55 2 taught and what levels?

15:19:57 3 JUROR RODRIGUEZ: I taught six through eighth grade.
15:20:00 4 I taught Earth science, physical science, and some biology.

15:20:04 5 MR. JONES: Thank you, ma'am.

15:20:05 6 And then my next question would be for Ms. Lewis,
15:20:09 7 Juror Number 12, please.

15:20:13 8 JUROR LEWIS: Yes, sir?

15:20:16 9 MR. JONES: Ms. Lewis, and I want to thank you. Voir
15:20:19 10 dire means, I think, speak the truth, and I think you certainly
15:20:22 11 did that on your questionnaire. And you stated on your
15:20:24 12 questionnaire that, due to your feelings about social media,
15:20:28 13 you could not be fair and impartial in a case involving social
15:20:32 14 media companies, right?

15:20:33 15 JUROR LEWIS: I think that is correct, yes.

15:20:35 16 MR. JONES: Thank you so much. I really appreciate
15:20:38 17 your candor on that, and I'd like to kind of build on that.

15:20:41 18 Thank you, ma'am. You can sit down.

15:20:42 19 I'd like to kind build on that with regard to the
15:20:45 20 rest of the jury panel. And there are a lot of feelings about
15:20:49 21 social media companies. I know that. And there's distrust of
15:20:53 22 them, and there's dislike of them.

15:20:58 23 My question to you is this: Does anybody feel that
15:21:01 24 social media companies like Facebook invade people's privacy
15:21:06 25 and do bad things because of that?

15:21:11 1 Yes. Thank you. And if I could, I'll take you-all
15:21:13 2 one at a time. And I'll start out on the front row with
15:21:18 3 Ms. Moore-Cation, please.

15:21:24 4 Now, obviously, you have that feeling, and there's
15:21:28 5 nothing wrong with having that feeling. We all have feelings.
15:21:32 6 The questions we've got to decide here is, because of that
15:21:36 7 feeling, does Facebook in this case start out a little bit
15:21:38 8 behind?

15:21:39 9 JUROR MOORE-CATION: No, they do not.

15:21:43 10 MR. JONES: Okay. We're on an even playing field,
15:21:45 11 right?

15:21:46 12 JUROR MOORE-CATION: Absolutely.

15:21:48 13 MR. JONES: And as we go forward, we're going to
15:21:49 14 decide the case based upon the evidence, not based upon any
15:21:51 15 feelings you might have?

15:21:53 16 JUROR MOORE-CATION: Correct.

15:21:54 17 MR. JONES: Thank you. I appreciate it.

15:21:55 18 Okay. Could we go down. Who else raised their hand
15:21:58 19 on the front row that said that? I think we're down at the
15:22:02 20 very end, Mr. Chang.

15:22:06 21 JUROR RUDOLPHI: That would be me also.

15:22:07 22 MR. JONES: Okay. I'm sorry. I didn't see you, did
15:22:10 23 I.

15:22:11 24 JUROR RUDOLPHI: My sentiment is the same as her.

15:22:15 25 MR. JONES: Excuse me?

15:22:16 1 JUROR RUDOLPHI: My sentiment is the same. They
15:22:19 2 won't start on the back end.

15:22:20 3 Okay. Thank you, Ms. Rudolphi.

15:22:25 4 MR. JONES: Mr. Chang, again, you have feelings,
15:22:28 5 obviously, about social media companies. My question to you is
15:22:31 6 pretty simple: Does everybody start out here on an even
15:22:35 7 playing field? Do we start out the same? Or is that something
15:22:38 8 that causes you to feel one side is ahead of the other?

15:22:42 9 JUROR CHANG: Well, I can think it starts even-keel.
15:22:46 10 I think if you were to push me and ask me that question again,
15:22:50 11 I probably would see you in a negative deficit in terms of not
15:22:55 12 even-keel. I get this case is not about merits of social media
15:23:03 13 companies, but it is in my mind.

15:23:06 14 MR. JONES: Certainly. Well, let me -- let me ask
15:23:09 15 you just a couple of more questions about that. You know,
15:23:13 16 before you've seen any evidence in this case, before you've
15:23:17 17 seen anything, is that something -- your feelings about social
15:23:22 18 media companies and Facebook, is that something that Facebook
15:23:25 19 would have to overcome as it proceeds in this case?

15:23:29 20 JUROR CHANG: Possibly. Like if it's a scale one to
15:23:35 21 five, it would be close to four.

15:23:37 22 MR. JONES: I got you. And is that something that,
15:23:40 23 you know, you might hold Facebook to a little higher standard
15:23:45 24 than the other party because of that, right?

15:23:48 25 JUROR CHANG: Correct.

15:23:49 1 MR. JONES: And is it something, your feelings,
15:23:52 2 something that you would -- you know, whether you wanted it to
15:23:56 3 or not, if a Facebook employee gets up there, you might, you
15:24:00 4 know, test their evidence a little harder just because of who
15:24:04 5 they work for? Is that fair?

15:24:06 6 JUROR CHANG: That's fair.

15:24:07 7 MR. JONES: Thank you, sir. I appreciate it. Thank
15:24:09 8 you so much for your candor. I really do appreciate it. Did I
15:24:13 9 miss anybody else on the front row with that question?

15:24:16 10 (No response)

15:24:16 11 MR. JONES: Okay. Let's go to the second row if we
15:24:18 12 could. Who has those feelings on the second row? Yes. Thank
15:24:23 13 you. Mr. Champlin, right, sir?

15:24:31 14 JUROR CHAMPLIN: Yes, sir.

15:24:34 15 MR. JONES: Okay. You've heard my questions before.
15:24:35 16 What I'm going to ask you is this: Obviously, you have strong
15:24:38 17 feelings about social media companies; is that right, sir?

15:24:41 18 JUROR CHAMPLIN: Yes, sir.

15:24:42 19 MR. JONES: And, obviously, we all know Facebook is a
15:24:44 20 social media company. So do they start out a little bit behind
15:24:48 21 in this case before we ever get going?

15:24:51 22 JUROR CHAMPLIN: I wouldn't think so in this case.

15:24:53 23 MR. JONES: Okay. Everybody is on even footing.

15:24:56 24 JUROR CHAMPLIN: Yes.

15:24:58 25 MR. JONES: Thank you, sir. I appreciate it. Thank

15:24:59 1 you for your candor.

15:25:02 2 JUROR ESTES: Ms. Estes.

15:25:03 3 MR. JONES: Ms. Estes. I appreciate you helping me
15:25:06 4 out.

15:25:07 5 JUROR ESTES: No worries.

15:25:08 6 MR. JONES: Very kind of you. And my question to you
15:25:10 7 is you're telling me I have strong feelings about social media
15:25:12 8 companies.

15:25:12 9 JUROR ESTES: From a personal standpoint, absolutely.
15:25:15 10 I don't use, won't use it. Big waste of time. Now, on the
15:25:19 11 business side of things, obviously, the company uses it, you
15:25:22 12 know, from an advertising standpoint. So ...

15:25:25 13 MR. JONES: Great. And, as we start this case, do
15:25:27 14 those feelings play any part in the way you feel about the
15:25:31 15 parties and the evidence that's about to come in? Do we all
15:25:34 16 start in the same place.

15:25:35 17 JUROR ESTES: Probably not.

15:25:37 18 MR. JONES: Okay. So before you hear any evidence in
15:25:40 19 this case -- and, again, I totally appreciate your candor.
15:25:43 20 Before you hear any evidence in this case, what you're telling
15:25:46 21 me is, Mr. Jones, you know, your client is starting out a bit
15:25:49 22 behind, sir.

15:25:49 23 JUROR ESTES: A very small part behind.

15:25:52 24 MR. JONES: But we are behind. Fair enough.

15:25:54 25 JUROR ESTES: Uh-huh.

15:25:56 1 MR. JONES: Again the same question, just as I asked
15:25:59 2 Mr. Chang, is it just due to the fact that we're Facebook and
15:26:00 3 we're a social media company, you're going to hold us to a
15:26:03 4 little higher standard than maybe you would another party?

15:26:06 5 JUROR ESTES: Yes, sir.

15:26:07 6 MR. JONES: And, again, when you hear testimony from,
15:26:09 7 say, a Facebook employee, is that also going to say, you know,
15:26:13 8 I'm going to listen a little harder to what he has to say just
15:26:15 9 because who he works for?

15:26:16 10 JUROR ESTES: Not necessarily.

15:26:18 11 MR. JONES: Not necessarily. Thank you. I
15:26:20 12 appreciate it. Thank you so much.

15:26:26 13 Yes. Mr. Ilango, you have strong feelings about
15:26:31 14 social media companies, right, sir?

15:26:32 15 JUROR ILANGO: Yes, I do.

15:26:33 16 MR. JONES: Is there anything about those feelings
15:26:36 17 that means that my client, Facebook, before you hear any
15:26:39 18 evidence in this case starts out just a little bit behind or
15:26:42 19 behind?

15:26:43 20 JUROR ILANGO: Yes, they do.

15:26:44 21 MR. JONES: Okay. And, again, you know, with regard
15:26:47 22 to my client, is it such that, you know, you're just going to
15:26:50 23 hold my client to a higher standard than you might some other
15:26:53 24 party just because of your strong feelings against social media
15:26:57 25 companies and Facebook, right, sir?

15:26:59 1 JUROR ILANGO: Yes.

15:27:01 2 MR. JONES: And, again, if you hear testimony from a
15:27:05 3 Facebook employee, you're going to -- just because of your
15:27:10 4 feelings, you're going to judge it little more harshly due to
15:27:14 5 who they work for, right, sir?

15:27:15 6 JUROR ILANGO: Not the employee, no.

15:27:17 7 MR. JONES: Not the employees?

15:27:19 8 JUROR ILANGO: Just the company.

15:27:21 9 MR. JONES: Thank you so much. I appreciate your
15:27:23 10 candor. And I think, yes, I've already talked to you. Thank
15:27:29 11 you so much, Ms. Lewis. I appreciate it.

15:27:31 12 And I think we're to Ms. Stone, right? And can you
15:27:36 13 tell me about your feelings with regard to social media
15:27:40 14 companies.

15:27:40 15 JUROR STONE: Yeah. So I think Facebook would be a
15:27:43 16 little bit behind.

15:27:44 17 MR. JONES: Thank you. So due to the fact the way
15:27:47 18 you feel about social media companies, Facebook in
15:27:50 19 particular -- and I appreciate your candor -- you're just
15:27:52 20 telling me Facebook starts behind in this case before any
15:27:55 21 evidence has been presented, right, ma'am?

15:27:57 22 JUROR STONE: Yes.

15:27:59 23 MR. JONES: And, again, similar questions. I'd just
15:28:01 24 like to ask you this: In this case would you hold Facebook,
15:28:04 25 due to your feelings in this regard, to a higher standard than

15:28:08 1 you might some other party?

15:28:10 2 JUROR STONE: Yes.

15:28:11 3 MR. JONES: Okay. And when Facebook employees -- and
15:28:13 4 they're going to. They're going to get up and testify. Would
15:28:15 5 you judge their testimony a little more harshly than others
15:28:19 6 based upon your feelings; is that right?

15:28:21 7 JUROR STONE: Yes.

15:28:22 8 MR. JONES: Thank you, ma'am. I certainly appreciate
15:28:24 9 your candor.

15:28:30 10 And on the third row, have I missed anybody? Yes,
15:28:32 11 ma'am. Ms. Rodriguez?

15:28:33 12 JUROR RODRIGUEZ: I raised my hand in response to
15:28:36 13 what you were saying about social media using data from its
15:28:41 14 users.

15:28:41 15 MR. JONES: Right.

15:28:42 16 JUROR RODRIGUEZ: And I responded to that.

15:28:45 17 MR. JONES: I understand. And I would then kind of
15:28:47 18 drill down as I've done with your other panel members, and I
15:28:50 19 certainly appreciate the answers they've given me. Is there
15:28:54 20 anything about that, that before we ever have any evidence from
15:28:57 21 that witness stand in this case, that causes you to feel that
15:29:01 22 Facebook's a little behind in this case already?

15:29:04 23 JUROR RODRIGUEZ: No.

15:29:05 24 MR. JONES: Okay. Thank you, ma'am. I appreciate
15:29:07 25 your candor. Thanks so much.

15:29:25 1 Now, Facebook and other social media companies have
15:29:28 2 been in the news lately with regard to a number of items, but
15:29:36 3 particularly with regard to politics. And I'm not going to ask
15:29:40 4 anybody about any questions about their political beliefs. I'm
15:29:42 5 just going to ask you this: Does anybody hold a political
15:29:47 6 belief of any kind such that your political belief causes you
15:29:53 7 to think that Facebook is not a good corporate entity?

15:29:56 8 Do any of you hold political beliefs that cause you
15:30:02 9 to feel that way?

15:30:03 10 Yes, sir, Mr. Chang. Thank you, sir. I appreciate
15:30:06 11 that.

15:30:09 12 One final thing. Did somebody else raise your hand
15:30:13 13 and I missed? Okay. Sorry. One final thing about Facebook
15:30:16 14 inquiries. Recently Facebook was involved in a class action
15:30:19 15 suit totally unrelated to the issues in this case, and notices
15:30:23 16 recently went out about this class action. Has anybody
15:30:26 17 received a notice like that?

15:30:29 18 (No response)

15:30:31 19 MR. JONES: Thank you. Now, excluding Mr. Kalish,
15:30:37 20 because he was kind enough to give us a lot of information
15:30:40 21 about his special knowledge, after hearing Judge Yeakel's
15:30:46 22 summary of this case, does anyone think, you know, after
15:30:52 23 hearing him talk about this case, I have some special knowledge
15:30:56 24 that applies to this case? Anybody feel like that as they sit
15:31:01 25 here?

15:31:03 1 (No response)

15:31:03 2 MR. JONES: Thank you. Now, a number of you have
15:31:10 3 started businesses. I noted that. And many of you own and
15:31:16 4 operate businesses. And I would like to ask this question to
15:31:22 5 the group as a whole because there's so many of you that do
15:31:26 6 that. And that is this:

15:31:27 7 Does anyone feel, from having started up a business
15:31:33 8 or owned and operated a business, that their competitors in the
15:31:38 9 marketplace are unfair to them? Does anybody feel like that?
15:31:46 10 Does anybody feel like I've been in business for a long time
15:31:50 11 and my competitors treat me very unfairly?

15:31:53 12 (No response)

15:31:53 13 MR. JONES: Does anybody feel like, as a general
15:31:56 14 rule -- this is just a general rule -- that large corporations
15:31:59 15 take advantage of smaller businesses? Anybody feel like that.

15:32:06 16 Mr. Chang. Thank you, sir.

15:32:09 17 Now, if we could, could I ask you one more question,
15:32:13 18 Mr. Chang. Excuse me? Thank you. I've got a few more. Okay.

15:32:16 19 Mr. Chang, if I could ask you a question, is your
15:32:29 20 feeling in that regard, larger corporations taking advantage of
15:32:33 21 smaller corporations, is that something that might affect your
15:32:36 22 deliberations?

15:32:37 23 JUROR CHANG: Possibly. Again, just because it's
15:32:42 24 hard to ignore as far as the concept goes.

15:32:46 25 MR. JONES: Thank you, sir. Let me ask it to you

15:32:49 1 this way: You know, in this case there is no doubt that Voxer
15:32:54 2 is not as large as Facebook is. Would that fact mean that you
15:33:00 3 would feel the need to kind of protect them in the case as a
15:33:06 4 juror? You would feel that way going into the case?

15:33:09 5 JUROR CHANG: Not necessarily, no.

15:33:13 6 MR. JONES: Thank you, sir. I appreciate it.

15:33:15 7 And I missed somebody else on the second row, I
15:33:19 8 think. Yes. Mr. Ilango.

15:33:28 9 And I'd ask you just the same question I asked him.
15:33:31 10 You know, in this case, like I just said, Voxer is no doubt
15:33:35 11 going to be smaller than Facebook. And my question to you: Do
15:33:38 12 you feel like you might need to take care of the smaller
15:33:42 13 business in a lawsuit with a larger business?

15:33:44 14 JUROR ILANGO: No.

15:33:46 15 MR. JONES: Thank you, sir. So they both -- size
15:33:48 16 would play no role whatsoever in your decision in this case?

15:33:51 17 JUROR ILANGO: No.

15:33:52 18 MR. JONES: Thank you, sir.

15:33:53 19 THE COURT: And I believe, finally, somebody on the
15:33:56 20 back row. Ms. Rodriguez? Yes, ma'am.

15:33:59 21 JUROR RODRIGUEZ: So you had asked if we think that
15:34:05 22 big companies take advantage of smaller ones?

15:34:07 23 MR. JONES: Yes, ma'am.

15:34:09 24 JUROR RODRIGUEZ: And I do believe that.

15:34:13 25 MR. JONES: And my question to you would be this:

15:34:13 1 Would that play any role in your deliberations in this case?

15:34:16 2 JUROR RODRIGUEZ: No.

15:34:17 3 MR. JONES: Thank you. I appreciate it.

15:34:25 4 Yes, sir. Mr. Kalish. I'm sorry.

15:34:28 5 JUROR KALISH: I have some issues with Facebook, and

15:34:31 6 I think it's the natural order of things, for larger companies

15:34:35 7 to take advantage of smaller companies when they can. I work

15:34:38 8 for a company that was definitely taken advantage of by one of

15:34:41 9 the largest companies in the world until recently. We turned

15:34:44 10 the tables on them. But I think that I might be somewhat more

15:34:49 11 skeptical of Facebook and perhaps not -- maybe put a little bit

15:34:55 12 more weight on the Voxer evidence and witnesses.

15:35:04 13 MR. JONES: Okay. And I appreciate your candor,

15:35:06 14 Mr. Kalish. It's very kind of you to tell me that.

15:35:09 15 So, if I get it right, what you're telling me is

15:35:13 16 that, look, Mr. Jones, as we start out this case, I want you to

15:35:18 17 know I'm going to have skepticism toward whatever evidence is

15:35:23 18 presented by Facebook. Fair enough?

15:35:25 19 JUROR KALISH: I would like to say no, but I think

15:35:28 20 that I would probably have that in the back of my mind, yes.

15:35:31 21 MR. JONES: Yeah. And that's something that -- that

15:35:34 22 you feel before we begin the evidence, right, sir? Before any

15:35:39 23 evidence comes in place?

15:35:40 24 JUROR KALISH: Right.

15:35:40 25 MR. JONES: Right, sir. And that's something that

15:35:43 1 will affect the way you deliberate and view the evidence, or
15:35:46 2 you're at least afraid it would? Fair enough, sir.

15:35:48 3 JUROR KALISH: I think that it's possible that I
15:35:50 4 would try not to. But I think I -- like I said, I think I
15:35:54 5 would be more skeptical, and I think it's a David-Goliath type
15:36:02 6 situation.

15:36:03 7 MR. JONES: Thank you, sir. I appreciate it. Thank
15:36:05 8 you so much.

15:36:06 9 Well, we're nearing the end of my time here. I'll
15:36:09 10 tell you what. I'll try to jump in and just ask just two more
15:36:12 11 questions or two more subject matters.

15:36:14 12 You've heard Judge Yeakel summarize this case. Is
15:36:21 13 there anybody that, when they heard about it, kind of had a
15:36:28 14 déjà vu kind of reaction to it? Kind of like, you know, hey,
15:36:31 15 I've seen that movie before, I have some similar experience, or
15:36:35 16 I know about certain circumstances that are just like that or
15:36:40 17 very similar to that?

15:36:41 18 Did anybody get that feeling or have that opinion
15:36:44 19 when they heard Judge Yeakel summarize the case?

15:36:47 20 (No response)

15:36:47 21 MR. JONES: Anybody? Thank you.

15:36:51 22 My final question to you is this, but before I ask
15:36:55 23 it, I just want again thank you for your time. The good news I
15:36:59 24 can tell you is I'm the last lawyer you're going to talk to
15:37:02 25 today, so I know you're glad about that. So thank you so much

15:37:06 1 for your time. You've been very patient with me.

15:37:08 2 My question to you is this: I take representing my
15:37:11 3 clients Meta, Facebook, Instagram very, very seriously and my
15:37:18 4 obligations to Mr. Poffenberger. As a result of that, I know I
15:37:22 5 may not have asked the right question just because I'm not
15:37:26 6 smart enough to. And my question to you is finally this: Is
15:37:30 7 there something that we haven't talked about that you say, you
15:37:33 8 know, in the back of your mind you're thinking, Mr. Jones, you
15:37:37 9 really need to know this about whether or not I can be a fair
15:37:40 10 juror to your clients. You really need to know this, but you
15:37:43 11 haven't asked the right question.

15:37:45 12 Is there anything like that in anybody's mind they
15:37:49 13 could tell me about? Anybody? Yes, ma'am.

15:37:55 14 JUROR MOORE-CATION: I would certainly hope this does
15:37:58 15 not come into play, but I think it's important for me to say
15:38:01 16 that I am very pro-small startup companies.

15:38:04 17 MR. JONES: Yes, ma'am.

15:38:07 18 JUROR MOORE-CATION: I don't think in this particular
15:38:08 19 case that it would be an obstacle, but I do have a stake in
15:38:16 20 several, and I just tend to really support entrepreneurs and
15:38:23 21 innovators. And you should probably know that. That could be
15:38:28 22 my bias.

15:38:30 23 MR. JONES: Thank you so much.

15:38:32 24 JUROR MOORE-CATION: I hope not.

15:38:34 25 MR. JONES: Thank you so much. You're so kind to

15:38:36 1 tell me that. You know where I'm going to go next, and that's
15:38:38 2 simply this: Is that something that you fear or you think may
15:38:41 3 affect your deliberations, or do you think you can put that
15:38:43 4 aside?

15:38:43 5 JUROR MOORE-CATION: I hope not. I believe that it
15:38:47 6 would not affect it. I hope it does not affect it. But I am
15:38:51 7 aware that I might carry that bias.

15:38:55 8 MR. JONES: Thank you, ma'am. I appreciate your
15:38:57 9 answer. I thank each and every one of you. I thank you very
15:39:01 10 much.

15:39:05 11 THE COURT: Pardon me for a minute. I have to keep
15:39:16 12 notes up here, too.

15:39:17 13 Ladies and gentlemen, the last couple of questions I
15:39:20 14 have for you I think the lawyers have covered, but I'm going to
15:39:24 15 ask them in my way. Other than what you have already stated,
15:39:29 16 either in response to my questions or in response to any of the
15:39:32 17 lawyers' questions, do you know of any reason why you might be
15:39:36 18 prejudice for or against any of the parties because of the
15:39:41 19 nature of this lawsuit or any other reason?

15:39:46 20 (No response)

15:39:46 21 THE COURT: If you were one of the parties in this
15:39:49 22 case, do you know of any reason that you haven't previously
15:39:53 23 stated why you would not be content to have the case tried by
15:39:57 24 someone in your frame of mind?

18:00:00 25 (No response)

15:40:02 1 THE COURT: And at the risk of being overly
15:40:04 2 redundant, but that's what I do to try to get a fair and
15:40:08 3 impartial jury, can you think of any other matter not yet
15:40:11 4 touched upon which you should call to the court's attention
15:40:15 5 which may have some bearing on your qualifications as a juror
15:40:19 6 or which might prevent you from rendering a fair and impartial
15:40:23 7 verdict in this case?

18:00:00 8 (No response)

15:40:26 9 THE COURT: Thank you. Let me see the lawyers at the
15:40:29 10 bench up here on this side for a moment, please.

15:40:32 11 (At the bench)

15:40:43 12 THE COURT: Okay. Two to a side. That's better than
15:40:46 13 clearing out all the tables.

15:40:48 14 It is my practice right now where I would release the
15:40:53 15 panel and we would take up your challenges for cause and the
15:40:55 16 other things that I've previously mentioned. Are there any
15:40:59 17 jurors that you want held back for a moment to have a bench
15:41:05 18 conference with regarding matters that you might want to
15:41:10 19 challenge them for cause on, or are you satisfied you have all
15:41:14 20 the information you need to make your challenges for cause?

15:41:20 21 MR. THOMPSON: None from Plaintiff, Your Honor.

15:41:23 22 THE COURT: You good too?

15:41:24 23 MR. JONES: Yes.

15:41:25 24 THE COURT: Then I'm going to release them for I
15:41:27 25 think about 30 minutes, and that should give us time to take up

15:41:30 1 the challenges for cause and the other things and for you to
15:41:32 2 mark your lists, and then we'll get them back in here. That
15:41:35 3 work for everybody?

15:41:36 4 MR. THOMPSON: Yes, Your Honor.

15:41:38 5 MR. JONES: Yes, Your Honor.

15:41:40 6 (In open court)

15:41:40 7 THE COURT: Ladies and gentlemen of the jury panel,
15:41:41 8 at this time I'm going to give you a break. We're not through,
15:41:45 9 but we're going to finish up. There's some matters I need to
15:41:49 10 take up with the lawyers, so I'm going to give you a break
15:41:54 11 until 4:15. Don't go far. Don't come back in the courtroom,
15:42:00 12 but by a little before 4:15, be out there in the area to where
15:42:05 13 the staff can bring you back in to seat you when we let you
15:42:09 14 know that I'm through with my discussion with the lawyers.

15:42:12 15 Now, I know we've got at least one schoolteacher on
15:42:17 16 this panel, so this is just like school. Look to your right,
15:42:20 17 look to your left, know who your neighbor is, because you need
15:42:23 18 to be seated in the same seats that you're in now when you come
15:42:27 19 back in the courtroom. So be sure you do that.

15:42:30 20 So at this time you'll be in recess until 4:15.

18:00:00 21 (Jury panel recessed)

15:43:28 22 THE COURT: Let the record reflect that the jury
15:43:29 23 panel has been recessed from the courtroom. There are no
15:43:33 24 prospective jurors remaining in the courtroom.

15:43:42 25 I indicated to you earlier today that I would be

15:43:44 1 keeping track of people that I thought would be people that
15:43:47 2 would be problem jurors and urged you to do the same. I didn't
15:43:56 3 find any that I thought would be problem jurors or that would
15:43:58 4 have a problem hearing this case. I'm sure you-all heard some
15:44:03 5 comments from jurors that might lead to your challenges for
15:44:06 6 cause.

15:44:06 7 But did anyone come up with anybody they would like
15:44:09 8 to discuss that we should determine whether just to exclude on
15:44:13 9 general principles or not?

15:44:15 10 I'll start with the plaintiff, not because I favor
15:44:19 11 the plaintiff, but I read from top to bottom, and in every case
15:44:22 12 I've ever tried the plaintiff has been above the "v."

15:44:26 13 So, Mr. Thompson, did you I have anybody listed?

15:44:30 14 MR. THOMPSON: None from our side, Your Honor?

15:44:32 15 THE COURT: And how about you, Mr. Jones?

15:44:35 16 MR. JONES: Your Honor, I have some challenges for
15:44:36 17 cause, but I have none that I think follow in the category you
15:44:37 18 just mentioned.

15:44:38 19 THE COURT: All right. Then I'm going to start with
15:44:40 20 the plaintiff again because that's my default. Mr. Thompson,
15:44:45 21 challenges for cause?

15:44:47 22 MR. THOMPSON: Your Honor, I would -- we would
15:44:53 23 challenge Number 17. I think it was pretty obvious that
15:44:59 24 Mr. Champlin, he has issues with how the patent office works.
15:45:05 25 He has issues with the patent process. It seems to me he's not

15:45:08 1 going to be able to be a fair and impartial juror on this
15:45:12 2 particular case.

15:45:14 3 THE COURT: All right. Let me hear a response from
15:45:17 4 Mr. Jones.

15:45:18 5 MR. JONES: Your Honor, I didn't hear anything from
15:45:21 6 Mr. Champlin that would result in rising to the level of cause.
15:45:25 7 He does have certain feelings, but he didn't say any of those
15:45:29 8 feelings were going to affect his deliberations. And, as such,
15:45:32 9 I don't think he met the appropriate standard to state a
15:45:35 10 challenge for cause.

15:45:36 11 THE COURT: I listened to him very carefully, and I
15:45:42 12 believe the last statement he made to whoever he spoke to first
15:45:46 13 said he could be fair. I take him at his word, so the
15:45:49 14 challenge for cause to Juror Number 17 is overruled.

15:45:58 15 Mr. Thompson, others?

15:45:59 16 MR. THOMPSON: No, Your Honor. No more challenges
15:46:01 17 for cause from Plaintiff.

15:46:02 18 THE COURT: All right. From the defendant?

15:46:04 19 MR. JONES: Yes, Your Honor.

15:46:06 20 THE COURT: Mr. Jones?

15:46:07 21 MR. JONES: We would challenge for cause Juror
15:46:10 22 Number 10 Mr. Chang. He said due to his feelings about social
15:46:15 23 media companies, Facebook, and other matters, that he had
15:46:18 24 preexisting feelings and opinions that would affect his
15:46:22 25 deliberations. And he could not assure us that he could put

15:46:26 1 those aside and they wouldn't affect his deliberations. In
15:46:29 2 fact, he said my client started out behind. That is our
15:46:33 3 challenge for cause, Your Honor.

15:46:34 4 THE COURT: All right. Mr. Thompson?

15:46:35 5 MR. THOMPSON: I'll let Mr. Chang's statements speak
15:46:38 6 for themselves, Your Honor.

15:46:39 7 THE COURT: Well, I'm going to tell you how I heard
15:46:42 8 him, and I agree with the defendant. So Juror Number 10, the
15:46:47 9 challenge for cause is sustained, and Juror Number 10 is off.

15:46:53 10 MR. THOMPSON: That's the best I could come up with,
15:46:55 11 Your Honor.

15:46:58 12 THE COURT: I appreciate your candor, but we all sit
15:47:00 13 here and hear the same things. And we've tried cases and we
15:47:03 14 just understand how it's going to work, so I appreciate that.

15:47:08 15 MR. JONES: We would next challenge for cause
15:47:10 16 Ms. Lewis, who on the form said she could not be a fair and
15:47:14 17 impartial juror in any case involving a social media company.
15:47:18 18 She has confirmed now on the record, Your Honor, and I think
15:47:22 19 she meets every requirement that's needed to be stricken for
15:47:26 20 cause.

15:47:28 21 MR. THOMPSON: Same response, Your Honor.

15:47:30 22 THE COURT: Yep. That's exactly the way I heard it,
15:47:32 23 so the challenge for cause is sustained, and Juror Number 12 is
15:47:41 24 stricken.

15:47:43 25 MR. JONES: Your Honor, our next challenge for cause

15:47:45 1 would be Mr. Ilango, who said he had strong feelings against my
15:47:49 2 client, Facebook. He said that he had strong feelings about
15:47:53 3 large corporations and the way they operated and that it would
15:47:56 4 affect the way he deliberated and viewed the evidence. And he
15:48:00 5 did not know that he could put it behind him, so I would
15:48:02 6 challenge him for cause also.

15:48:05 7 MR. THOMPSON: Your Honor, I thought that Mr. Ilango
15:48:08 8 at some point said that he could put those things aside. I may
15:48:10 9 be wrong, but that he had strong feelings but he could put
15:48:13 10 those aside for this particular case.

15:48:15 11 THE COURT: I didn't hear him say he could put them
15:48:18 12 aside. I did hear him say pretty strongly that Facebook started
15:48:25 13 behind, and I thought he said that strongly enough to where he
15:48:30 14 would have a problem rehabilitating himself. So I will sustain
15:48:34 15 the challenge for cause to Juror 14.

15:48:41 16 MR. JONES: Your Honor, my next challenge for cause
15:48:44 17 would be Juror Number 15, Ms. Estes, who, again, testified
15:48:47 18 that -- or who stated that, due to her feelings about larger
15:48:54 19 companies over smaller companies and the way they take
15:48:57 20 advantage of them, as well as about my client, Facebook, that
15:49:01 21 she had preexisting feelings that would cause my client to
15:49:04 22 start out behind. And there was some impression that she
15:49:07 23 wouldn't put aside or couldn't guarantee if she could put aside
15:49:11 24 as she looked at the evidence, so we would challenge her for
15:49:13 25 cause also.

15:49:15 1 MR. THOMPSON: Your Honor, I thought that I heard
15:49:18 2 Mrs. Estes -- I know she had some strong opinions, but I
15:49:20 3 thought she had said that she would do her best to set those
15:49:23 4 aside to be a juror on this case. But I may have misunderstood
15:49:27 5 her.

15:49:28 6 THE COURT: Well, I also think that she said she
15:49:33 7 could set those aside, so I'm going to overrule the challenge
15:49:40 8 for cause to Juror Number 15.

15:49:45 9 MR. JONES: Thank you. And then my final challenge
15:49:47 10 for cause, I believe, unless my colleagues tell me I've missed
15:49:50 11 somebody -- and I may have -- but, anyway, would be Juror
15:49:55 12 Number 21, Mr. Kalish who said that, due to his experiences in
15:50:01 13 the workplace, that he could not be fair to Facebook.

15:50:04 14 MR. THOMPSON: I'll defer to the Court on that one.

15:50:07 15 THE COURT: Well, I'm going to take the easy way out.
15:50:10 16 Unless Mr. Jones is given a note that he's missed somebody in
15:50:15 17 between, we're not going to get to 21 anyway, so I won't rule
15:50:18 18 on that one.

15:50:21 19 MR. VAN NEST: We did miss someone, Your Honor.

15:50:24 20 THE COURT: So now tell me which one you missed.

15:50:27 21 MR. JONES: It would be Juror Number 11, Ms. Stone,
15:50:30 22 who said that -- my memory of this is that she said that, due
15:50:35 23 to her feelings about social media companies, that Facebook
15:50:39 24 would be starting out behind and that she did not guarantee us
15:50:45 25 and say for certain that she could put those feelings aside in

15:50:49 1 considering the evidence.

15:50:54 2 MR. VAN NEST: Your Honor, may I mention one thing?

15:50:55 3 I apologize. May I mention one thing about her as well?

15:50:59 4 THE COURT: Yes.

15:51:00 5 MR. VAN NEST: She actually did say that she would be

15:51:02 6 holding our employees to a much higher standard in listening to

15:51:06 7 their testimony. That was in addition to saying that the

15:51:09 8 company would start out behind. That is Ms. stone.

15:51:16 9 THE COURT: And you don't think that would be

15:51:18 10 deserving of that, Mr. Jones?

15:51:20 11 (Laughter)

15:51:20 12 MR. JONES: I hope not.

15:51:21 13 MR. THOMPSON: Your Honor, I didn't hear her confirm

15:51:27 14 with that level of, I guess, power that she was going to -- she

15:51:30 15 couldn't set things aside. I did understand that she didn't

15:51:33 16 like social media companies and didn't use it.

15:51:38 17 THE COURT: My notes indicate concern about being

15:51:41 18 able to set those aside, so I'm going to sustain the challenge

15:51:43 19 for cause to Juror 11. So is that it on challenges for cause.

15:51:51 20 MR. JONES: Yes, sir, Your Honor.

15:52:10 21 THE COURT: So Juror Number 18 is the last juror in

15:52:12 22 your strike range; is that correct? Does everybody agree with

15:52:15 23 that.

15:52:15 24 MR. THOMPSON: I agree with that, Your Honor.

15:52:23 25 MR. VAN NEST: Juror 18 is the last one?

15:52:25 1 THE COURT: Yes. As long as you agree with that.

15:52:28 2 MR. VAN NEST: We do.

15:52:28 3 THE COURT: Because I don't want anybody, unless you
15:52:31 4 just get carried away, to strike outside your strike range. I
15:52:35 5 don't want you to do it because you over ...

15:52:37 6 All right. Then that's what we'll do. I'll give
15:52:41 7 you -- what do you need? 15 minutes maybe?

15:52:44 8 MR. THOMPSON: That would be great.

15:52:45 9 THE COURT: All right. We've got the jury coming
15:52:47 10 back at 4:15. I'll be back at 4:10 or so. Actually, when you
15:52:52 11 get through with your strikes, if you'll gave them to
15:52:54 12 Ms. Oakes, she'll bring them to me and I'll look at it and come
15:52:57 13 back, and it will be about 410.

15:52:59 14 Do you-all want to take a quick recess after you've
15:53:02 15 stricken your lists?

15:53:04 16 MR. VAN NEST: Sure. That would be great, Your
15:53:05 17 Honor.

15:53:05 18 THE COURT: Why don't you strike your lists, give
15:53:07 19 them to Ms. Oakes, and then take whatever break you want to.
15:53:10 20 And when you're back in the courtroom, then we'll get the jury
15:53:12 21 back in.

15:53:18 22 (Recess)

16:14:39 23 (Open court, no jury)

16:14:39 24 THE COURT: You've had an opportunity to see one
16:14:40 25 another's strikes.

16:14:42 1 MR. THOMPSON: Yes we have, Your Honor.

16:14:43 2 MR. JONES: Yes, Your Honor.

16:14:44 3 THE COURT: Is there any other thing we need to take
16:14:46 4 up before we seat the jury? You're satisfied that is the jury,
16:14:49 5 whether you're satisfied with each of them individually or not?

16:14:52 6 MR. VAN NEST: That's right, Your Honor.

16:14:53 7 THE COURT: We good?

16:14:54 8 Well, I will tell you, having been on your side of
16:14:56 9 the bench for a long time, I'm sure you-all, like I am
16:15:02 10 superstitious, because lawyers are always superstitious, but it
16:15:07 11 always used to worry me -- you didn't have any double-strikes.
16:15:10 12 It always used to worry me when I had a double-strike because I
16:15:13 13 wanted to know what I missed. You know, if they wanted to
16:15:17 14 strike that juror, why did I strike the juror?

16:15:20 15 So if we're ready, we'll go ahead and bring the jury
16:15:24 16 in. And you can be seated until they get seated.

16:17:02 17 (Open court, prospective jurors present)

16:17:02 18 THE COURT: All right. Let the record reflect the
16:17:05 19 jury panel is back in the room. The lawyers have struck their
16:17:09 20 lists. I have reviewed the lists.

16:17:12 21 Ms. Oakes, would you please read the names of the
16:17:14 22 jurors to be impaneled. And, as your name is called, if you'll
16:17:18 23 come forward to the court security officer here, he will direct
16:17:22 24 you to where you're going to sit.

16:17:24 25 THE CLERK: Juror Number 2, Roxann Marie Welch;

16:17:28 1 Juror Number 3, Amelia Grace Nelson;

16:17:32 2 Juror Number 4, James Joseph Ziaja;

16:17:36 3 Juror Number 5, Jackie Lura Albright;

16:17:38 4 Juror Number 7, Laura Storrs Meyer.

16:17:43 5 THE COURT: Now, you-all smile as you come forward.

16:17:49 6 THE CLERK: Juror Number 13, Roger Dale Rylie;

16:17:56 7 Juror Number 15, Laura Lee Estes; and

16:18:02 8 Juror Number 16, Deborah Dee Lancaster.

16:18:16 9 THE COURT: Let me direct my remarks to those of you

16:18:19 10 that are not seated as jurors. I want to thank you again for

16:18:23 11 doing your civic duty and being present today. We could not

16:18:28 12 get a jury that is acceptable to the lawyers and the court

16:18:33 13 without deliberately summoning more people than we know we're

16:18:37 14 going to use on the jury in order that we get a cross-section

16:18:42 15 and take care of it the way we have done here today.

16:18:45 16 I know that I speak for the parties and the lawyers

16:18:49 17 when I thank you for your time and patience here today. But at

16:18:53 18 this time I'm going to excuse you, and you may check with the

16:18:57 19 clerk's office for any letters you might need for employers or

16:19:02 20 anything, and the clerk's office will contact you if you're

16:19:05 21 needed again.

16:19:06 22 So at this time, with the thanks of the court, you

16:19:10 23 are excused.

16:19:40 24 (Remaining prospective jurors excused)

16:19:40 25 THE CLERK: Will the jury please stand. The lawyers

16:19:44 1 may be seated. And if you'll raise your right hands,
16:19:47 2 Ms. Oakes, will you please administer the oath to the jurors.
16:19:54 3 (Jury sworn)
16:20:16 4 THE COURT: You may be seated.
16:20:18 5 I'm not going to -- I'm going to try not to keep you
16:20:22 6 here very long with what we're going to do today because I know
16:20:25 7 you've been here a while. I'm going to give you some
16:20:28 8 preliminary instructions with which you need to abide, and I'm
16:20:32 9 going to tell you a little bit about what our work schedule is
16:20:36 10 going to be. And then I will recess you for the evening, and
16:20:38 11 we'll start tomorrow fresh with the opening statements by the
16:20:42 12 lawyers and begin with the evidence then.
16:20:44 13 So now that you've been sworn, as I said, I'm going
16:20:48 14 to give you some preliminary instructions to guide your
16:20:51 15 participation in the trial.
16:20:53 16 It will be your duty to find from the evidence what
16:20:56 17 the facts are. You and you alone are the judges of the facts.
16:21:02 18 You will then have to apply to those facts to the law as the
16:21:06 19 court will give it to you, and you must follow that law whether
16:21:10 20 you agree with it or not.
16:21:15 21 Nothing the court may say or do during the course of
16:21:18 22 the trial is intended to indicate, nor should it be taken by
16:21:21 23 you as indicating, what your verdict should be. The evidence
16:21:25 24 from which you will find the facts will consist of, one, the
16:21:29 25 testimony of witnesses; two, written documents and other things

16:21:34 1 that are received into the record as exhibits; three, any facts
16:21:40 2 the lawyers agree or stipulate to or that the court may
16:21:44 3 instruct you to find; and, four, any applicable presumption.

16:21:48 4 Certain things are not evidence and must not be
16:21:53 5 considered by you, and I will list them for you now.

16:21:57 6 Statements, arguments, and questions by lawyers are
16:22:00 7 not evidence.

16:22:03 8 Objections to questions are not evidence. Lawyers
16:22:06 9 have an obligation to their client to make an objection when
16:22:10 10 they believe the evidence being offered is improper under the
16:22:13 11 rules of evidence. You should not be influenced by the
16:22:17 12 objection or by the court's ruling on it. If the objection is
16:22:24 13 sustained, ignore the question. If the objection is overruled,
16:22:29 14 treat the answer like any other. If you are instructed that
16:22:32 15 some item of evidence is received for a limited purpose only,
16:22:36 16 you must follow that instruction, whatever it may be.

16:22:39 17 Testimony that the court has excluded or told you to
16:22:44 18 disregard is not evidence and must not be considered. Anything
16:22:50 19 that you have seen or heard outside the courtroom is not
16:22:54 20 evidence and must be disregarded. You are to decide the case
16:22:59 21 solely on the evidence presented here in the courtroom.

16:23:04 22 Now, there are two kinds of evidence, direct and
16:23:09 23 circumstantial. "Direct evidence" is direct proof of a fact,
16:23:14 24 such as the testimony of an eyewitness. "Circumstantial
16:23:18 25 evidence" is proof of facts from which you may infer or

16:23:21 1 conclude that other facts exist. I will give you further
16:23:26 2 instructions on these as well as other matters at the end of
16:23:29 3 the case, but have in mind that you may consider both kinds of
16:23:33 4 evidence, that is, both direct and circumstantial.

16:23:37 5 It will be up to you to decide which witnesses to
16:23:41 6 believe, which witnesses not to believe, and how much of any
16:23:45 7 witness's testimony to accept or reject. I will give you some
16:23:50 8 guidelines for determining the credibility of witnesses at the
16:23:53 9 end of the case.

16:23:54 10 Now, a few words about your conduct as jurors. You
16:24:00 11 should give careful testimony -- pardon me. You should give
16:24:04 12 careful attention to testimony and evidence presented for your
16:24:07 13 consideration during the trial, but you should not form or
16:24:11 14 express any opinion about the case one way or the other until
16:24:15 15 you have heard all of the evidence and have had the benefit of
16:24:19 16 the closing arguments of the lawyers and my instructions on the
16:24:24 17 applicable law.

16:24:25 18 If you would like to take notes during the trial, you
16:24:28 19 may do so. If you do take notes, be careful not to get so
16:24:33 20 involved in note-taking that you become distracted and miss
16:24:37 21 part of the testimony. Your notes are to be used only as aids
16:24:42 22 to your memory, and if your memory should later be different
16:24:46 23 from your notes, you should rely on your memory, not on your
16:24:51 24 notes.

16:24:52 25 If you do not take notes, rely only on your own

16:24:56 1 independent memory of testimony. Do not be unduly influenced
16:25:01 2 by the notes of other jurors. A juror's notes are not entitled
16:25:06 3 to any greater weight than the recollection of each juror
16:25:10 4 concerning the testimony. And we will provide you with books
16:25:14 5 tomorrow when you come back to keep your notes in.

16:25:16 6 Although exhibits which I admit into evidence during
16:25:20 7 the course of the trial will be available to you for your
16:25:23 8 inspection and review during your deliberation on a verdict,
16:25:27 9 under normal circumstances, no written transcript of the
16:25:30 10 testimony of witnesses can be made available to you for your
16:25:34 11 review during your deliberations. Nor under normal
16:25:38 12 circumstances can all or any significant portion of a witness's
16:25:43 13 testimony be read to you once you commence your deliberations.
16:25:47 14 It is therefore very important that you pay strict attention to
16:25:50 15 the testimony given by each witness during the trial of this
16:25:54 16 case.

16:25:56 17 During the course of the trial, do not speak with any
16:26:00 18 witness or with the defendants or the plaintiffs or with any of
16:26:04 19 the lawyers in this case. Please do not talk with them about
16:26:08 20 any subject at all. Until you retire to deliberate, you may
16:26:13 21 not discuss this case with anyone, even your fellow jurors, and
16:26:17 22 you must not permit anyone to attempt to discuss it with you or
16:26:22 23 in your presence.

16:26:23 24 And, insofar as the lawyers are concerned as well as
16:26:27 25 others whom you may come to recognize as having some connection

16:26:31 1 with the case, you are instructed that in order to avoid even
16:26:36 2 the appearance of impropriety, you should have no conversation
16:26:40 3 whatever with those persons while you are serving on the jury.

16:26:44 4 The Sixth Amendment to our constitution guarantees a
16:26:50 5 trial by an impartial jury. This means that, as jurors, you
16:26:54 6 must decide this case based solely on the evidence and law
16:26:57 7 presented to you here in the courtroom. Until all of the
16:27:01 8 evidence and arguments have been presented and you begin to
16:27:04 9 deliberate, you may not discuss this case with anyone, even
16:27:09 10 your fellow jurors.

16:27:10 11 After you start to deliberate, you may discuss the
16:27:13 12 case, the evidence, and the law as it has been presented, but
16:27:17 13 only with your fellow jurors and only when you are all present
16:27:21 14 at the same time in your jury room? You cannot discuss it with
16:27:26 15 anyone else until you have returned the verdict and the case
16:27:29 16 has come to an end.

16:27:30 17 Now I will walk you through a few specific examples.
16:27:35 18 First, this means that during the trial you must not conduct
16:27:39 19 any independent research about this case or the matters, legal
16:27:45 20 issues, individuals, or other entities involved in this case.
16:27:50 21 Just as you must not search or review any traditional sources
16:27:54 22 of information about this case, such as dictionaries, reference
16:27:58 23 materials, or television, news, or entertainment programs, you
16:28:02 24 must not search the Internet or any other electronic resources
16:28:06 25 for information about this case or the witnesses or the parties

16:28:10 1 involved in it. The bottom line for the important work you
16:28:14 2 will be doing is that you must base your verdict solely on the
16:28:18 3 evidence presented in the courtroom and my instructions on the
16:28:22 4 law.

16:28:24 5 Second, this means that you must not communicate
16:28:27 6 about the case with anyone, including your family and friends,
16:28:31 7 until deliberations when you will discuss the case only with
16:28:35 8 other jurors. During deliberations you must not communicate
16:28:40 9 about the case with anyone else.

16:28:43 10 Most of us use smart phones, tablets, or computers in
16:28:47 11 our daily lives to access the Internet for information and to
16:28:52 12 participate in social media platforms. To remain impartial
16:28:56 13 jurors, however, you must not communicate with anyone about
16:28:59 14 this case, whether in person, in writing, or through e-mail,
16:29:04 15 text messaging, blogs, or social media websites and apps like
16:29:09 16 Twitter, Facebook, Instagram, LinkedIn, Youtube, WhatsApp,
16:29:15 17 GroupMe, Snapchat, TikTok and the like.

16:29:18 18 Please note that these restrictions are about all
16:29:22 19 kinds of communication about the case, even those which are not
16:29:26 20 directed at any particular person or group. Communication like
16:29:32 21 blog posts or Tweets can be shared to an ever-expanding circle
16:29:36 22 of people and can have an unexpected impact on the trial. For
16:29:43 23 example, a post you might make to your social media account
16:29:46 24 might be viewable by a witness who is not supposed to know what
16:29:50 25 has happened in the courtroom before he or she has testified.

16:29:55 1 For these reasons you must inform me immediately if
16:29:57 2 you learn about or share any information about the case outside
16:30:02 3 the courtroom, even by accident, or if you discover that
16:30:07 4 another juror has done so.

16:30:08 5 Finally a word about an even newer challenge for
16:30:13 6 trials such as this one. Persons, entities, and even foreign
16:30:18 7 governments may seek to manipulate your opinions or your
16:30:21 8 impartiality during deliberations using the communications I
16:30:25 9 have already discussed or using fake social media accounts, but
16:30:33 10 these misinformation efforts might also be undertaken through
16:30:36 11 targeted advertising online or on social media.

16:30:41 12 Many of the tools you use to access e-mail, social
16:30:44 13 media, and the Internet display third-party notifications
16:30:49 14 pop-ups, or ads while you're using them. These communications
16:30:52 15 may be intended to persuade you or your community on an issue
16:30:57 16 that can influence you in your service as juror on this case.

16:31:01 17 For example, while accessing your e-mail, social
16:31:05 18 media, or the Internet, through no fault of your own you might
16:31:09 19 see pop-ups containing information about this case or the
16:31:12 20 matters, legal principles, individuals, or other entities in
16:31:17 21 this case. Please be aware of this possibility, ignore any
16:31:23 22 pop-ups or ads that might be relevant to what we are doing
16:31:26 23 here, and certainly do not click through to learn more about
16:31:29 24 these notifications if this happens -- pardon me -- about these
16:31:37 25 notifications or ads if they appear. If this happens, please

16:31:40 1 let me know.

16:31:41 2 This is a recurring problem in courts. We have been
16:31:44 3 very fortunate in Austin that we have not had a problem with
16:31:48 4 it. What happens is, if you attempt to investigate anything
16:31:52 5 about this case or anything electronically and it comes to the
16:31:58 6 attention of the parties or the court, that means we will have
16:32:01 7 wasted all our time in the trial up to that point, as I will
16:32:05 8 have to dismiss you and we will have to start the case totally
16:32:08 9 over again and select a new jury.

16:32:11 10 So please take me at my word, while you're serving on
16:32:14 11 this jury, it is really important, and it is important to these
16:32:18 12 parties' rights, that you decide this case based solely on the
16:32:23 13 evidence and my instructions on the law. And at the beginning
16:32:27 14 of each day I may ask you whether you have learned or shared
16:32:31 15 any information outside this courtroom. I like to let the jury
16:32:34 16 know in advance that I may be doing that so you're prepared for
16:32:38 17 the question. But it is just better if you just have
16:32:43 18 everything shut down with regard to this case while you're
16:32:46 19 involved in it.

16:32:47 20 I hope that for all of you this case is interesting
16:32:50 21 and noteworthy. From time to time during the trial, I may be
16:32:55 22 called upon to make rulings on law -- rulings of law on motions
16:33:00 23 or objections made by the lawyers. You should not infer or
16:33:04 24 conclude from any ruling I may make that I have any opinions on
16:33:08 25 the merits of the case favoring one side or the other.

16:33:12 1 And if I sustain an objection to a question that goes
16:33:15 2 unanswered by the witness, you should not speculate on what
16:33:19 3 answer might have been given, nor should you draw any
16:33:22 4 inferences or conclusions from the question itself.

16:33:27 5 During the trial it may be necessary for me to confer
16:33:31 6 with the lawyers from time to time out of your hearing
16:33:34 7 concerning questions of law or procedure that require
16:33:39 8 consideration by the court alone. On some occasions you may be
16:33:42 9 excused from the courtroom as a convenience to you and to us
16:33:47 10 while I discuss such matters with the lawyers.

16:33:50 11 We will try to limit such interruptions as much as
16:33:53 12 possible, but you should remember at all times the importance
16:33:57 13 of the matter you are here to determine and should be patient
16:34:01 14 even though the case may seem to go slowly.

16:34:05 15 As I indicated earlier, the trial will begin tomorrow
16:34:08 16 morning at nine o'clock. The lawyers for each side will be
16:34:12 17 given an opportunity to make opening statements in which they
16:34:16 18 may explain the issues in the case and summarize the facts they
16:34:20 19 expect the evidence will show.

16:34:23 20 First the lawyer for Voxer, Inc. and Voxer IP, LLC
16:34:27 21 will make an opening statement, which, again, is simply an
16:34:32 22 outline to help you understand the evidence that the Voxer
16:34:36 23 lawyers expect to introduce.

16:34:38 24 Next the attorneys for Facebook, or Meta Platforms,
16:34:42 25 and Instagram will make an opening statement.

16:34:46 1 Voxer will then present witnesses, and the lawyer for
16:34:49 2 Meta Platforms and Instagram may cross-examine them.

16:34:52 3 Following Voxer's case, Meta may present witnesses,
16:34:57 4 and counsel for Voxer will have the opportunity to
16:35:01 5 cross-examine them.

16:35:02 6 Subsequently, rebuttal witnesses may be presented.

16:35:06 7 After all of the testimony and evidence has been
16:35:09 8 presented, the lawyers will then be given another opportunity
16:35:12 9 to address you and to make their summations or final arguments
16:35:17 10 in this case.

16:35:18 11 The statements that the lawyers make at the beginning
16:35:21 12 of the case, as well as the arguments they present at the end
16:35:25 13 of trial, are not to be considered by you either as evidence,
16:35:29 14 which comes only from the witnesses and exhibits, or as your
16:35:34 15 instruction on the law, which will come only from me.
16:35:38 16 Nevertheless, these statements and arguments are intended to
16:35:42 17 help you understand the issues and the evidence as it comes in,
16:35:45 18 as well as the positions taken by both sides.

16:35:52 19 Now, a little bit about what our order of work will
16:35:55 20 be. We will commence every morning at nine o'clock, so I ask
16:35:59 21 you to be in your jury room a little before nine o'clock so we
16:36:04 22 can start at 9:00. The court security officer will show you
16:36:07 23 where your jury room is and explain to you how to get there.

16:36:11 24 We will go until noon or as close to noon as there is
16:36:16 25 a convenient stopping point in the evidence each day. It may

16:36:19 1 be a little before, a little later. We will endeavor to get
16:36:24 2 back by 1:30 and commence our afternoon sessions at 1:30, and
16:36:28 3 we will go until 5:00 or as close to 5:00 as there is a
16:36:33 4 convenient stopping point in the evidence. It may be a little
16:36:37 5 earlier, it maybe a little later.

16:36:38 6 We will take a midmorning break about 10:30 and a
16:36:44 7 midafternoon break about 3:15 or 3:30. I will not keep you
16:36:49 8 seated in the jury box any longer than two hours at a stretch,
16:36:55 9 so plan on that so we don't have undue interruptions. So
16:36:59 10 that's the way we will do it.

16:37:03 11 There will be things that come up which will affect
16:37:06 12 that schedule. Austin has grown a lot as you've noticed in the
16:37:12 13 last years. The last time we got a new judicial position in
16:37:16 14 Austin was 1991. That's 31 years ago. We do not have enough
16:37:21 15 federal judges in Austin. We only have two. Our docket is
16:37:25 16 extremely large. The rest of it doesn't stop while I'm trying
16:37:29 17 a case, so there may be times that it will seem a little
16:37:33 18 disjointed because there will be something that I absolutely
16:37:36 19 have to take up.

16:37:36 20 I try to do that over the noon hour or in the evening
16:37:41 21 or afternoon recesses so I don't inconvenience you too much,
16:37:45 22 but bear in mind it's an inconvenience on the lawyers and
16:37:49 23 everybody, but the rest of the business of the court doesn't
16:37:52 24 stop because I'm trying a case.

16:37:54 25 I can tell you on Wednesday we're going to have a

16:37:58 1 longer noon hour just so you can plan accordingly. We're
16:38:03 2 probably going to recess about 11:15 and probably be back about
16:38:06 3 two o'clock because of a matter of long standing that I've
16:38:11 4 previously committed to.

16:38:12 5 But I will generally always be able to let you know
16:38:16 6 what we're doing ahead of time. Again, we will try to be back
16:38:22 7 on every other day by 1:30 so we can make this move along
16:38:26 8 pretty quickly. But keep in mind there will be some
16:38:31 9 interruptions, and you will get a longer noon hour on Wednesday
16:38:34 10 because I already know that.

16:38:35 11 Now, you will be given notebooks, the contents of
16:38:43 12 which I have worked out with the lawyers, that will contain
16:38:48 13 some things such as the patents you're going to hear a lot
16:38:52 14 about, such as the claims that are asserted in the patents. So
16:38:57 15 you'll have those to look at and follow along. And a list of
16:39:01 16 the questions that you're going to be asked to answer at the
16:39:04 17 end of the trial so you'll have some idea of where you're going
16:39:08 18 with this. Don't get consumed by the notebooks. It's just
16:39:11 19 there to help you, but listen to the evidence and then listen
16:39:17 20 to my charge. But it just goes a little more smoothly if you
16:39:23 21 have some idea of where we're headed.

16:39:25 22 The lawyers are going to assist you with that first
16:39:28 23 with their opening statements and then as we proceed during
16:39:31 24 trial. But bear that in mind.

16:39:34 25 Now, we're about to take our first break during the

16:39:37 1 trial, and I want to remind you of the instructions that I've
16:39:40 2 just given you. I'll give them to you in abbreviated form.

16:39:45 3 Until the trial is over, you are not to discuss this
16:39:47 4 case with anyone, including your fellow jurors, members of your
16:39:51 5 family, or people involved in the trial or anyone else. If
16:39:58 6 anyone approaches you and tries to talk to you about the case,
16:40:01 7 do not tell your fellow jurors but advise me about it
16:40:04 8 immediately.

16:40:05 9 Do not read or listen to any news reports of the
16:40:08 10 trial. Finally, remember to keep an open mind until all of the
16:40:11 11 evidence has been received and you have heard the views of your
16:40:14 12 fellow jurors. And do not attempt to find out anything about
16:40:22 13 this case or any of the issues in it through the use of any
16:40:24 14 electronic device, and do not transmit any information about
16:40:28 15 this case through any electronic device.

16:40:30 16 Now, the gentleman over here to your left, my right,
16:40:35 17 is your court security officer. You will get to know him
16:40:38 18 throughout the trial. As I said, he will assist you with how
16:40:42 19 to get in and out of the jury room. He looks like a really
16:40:46 20 nice man. Believe me, he is not. I have instructed him that
16:40:49 21 if he sees any of you using any electronic device, he is to
16:40:53 22 take it from you, throw it to the floor, and smash it into
16:40:56 23 little bits while you watch. So this will just go much more
16:41:00 24 smoothly if you take me at my word and don't try to find out
16:41:03 25 anything about this case. But if you need to speak with me

16:41:11 1 about anything, simply give a signed note to him to give to me,
16:41:15 2 and then we will take that up from there.

16:41:17 3 Now, I may not repeat these things to you before
16:41:20 4 every break we take, but keep them in mind throughout the
16:41:23 5 trial.

16:41:23 6 So at this time you will be in recess until
16:41:26 7 nine o'clock in the morning. Please remember all of these
16:41:30 8 instructions that I have given you. Please be back in your
16:41:33 9 jury room a little bit before nine o'clock so we can start. So
16:41:37 10 at this time you are recessed.

16:41:38 11 (Jury recessed)

16:42:25 12 THE COURT: You may be seated. Couple of things for
16:42:28 13 tomorrow. I have looked over what you have provided to go in
16:42:33 14 the juror notebooks. I don't have a problem with it other than
16:42:37 15 the fact I think I'm not going to submit them the instructions
16:42:42 16 in the notebooks because they look a little daunting, and I
16:42:45 17 have -- and I don't think I have a problem with giving them to
16:42:49 18 the jury at the end. But I'm afraid they'll become consumed
16:42:53 19 with them and spend more time on the notebooks than they will
16:42:56 20 be listening to your case. So I'm going to include everything
16:42:59 21 else, including the verdict form we've discussed, unless
16:43:03 22 someone has a major objection to my scaling it down that way?

16:43:06 23 MR. POWELL: Your Honor, I have just one question.
16:43:08 24 Would I be able -- would we be able to refer to the jury
16:43:11 25 instructions since we've agreed to them during the trial

16:43:14 1 proceedings?

16:43:14 2 THE COURT: Any problem over here?

16:43:17 3 MR. VAN NEST: No. Of course not.

16:43:17 4 THE COURT: Then you may. As long as they're agreed
16:43:19 5 to, I don't have any problem with any of that.

16:43:21 6 MR. POWELL: Thank you, Your Honor.

16:43:22 7 THE COURT: All right. Any questions you-all may
16:43:24 8 have about anything we need to take up before we come back in
16:43:27 9 the morning?

16:43:27 10 MR. POWELL: The plaintiff does have one matter,
16:43:29 11 Your Honor.

16:43:29 12 THE COURT: All right.

16:43:30 13 MR. POWELL: And I'm sorry. I'd hoped we'd make it
16:43:32 14 to tomorrow before we had to do this, but the plaintiff does
16:43:35 15 believe the door has been opened, although this time it was the
16:43:38 16 back door, by baiting the jury with the issues we addressed on
16:43:42 17 the MIL 3. You heard them talk about Facebook not a good
16:43:46 18 corporate citizen. You heard them talk about competitor
16:43:49 19 treated unfairly. Those are the issues that the evidence
16:43:53 20 that's being excluded addresses.

16:43:55 21 We would like leave to file a brief, Your Honor. I
16:43:57 22 have it with me today. I can provide a copy to the other side.
16:44:00 23 We'd ask the Court to reconsider its motion -- its ruling so
16:44:04 24 that we can actually address this in openings. We understand
16:44:08 25 if it does not happen in openings, we would like the

16:44:10 1 opportunity to present the evidence during Mr. Katis's direct
16:44:13 2 examination tomorrow. He lived it. He should be able to
16:44:17 3 testify about it.

16:44:18 4 THE COURT: Let me hear from the defendant.

16:44:21 5 MR. VAN NEST: Your Honor, I didn't hear anything in
16:44:23 6 the voir dire that was out of the ordinary. We had the
16:44:26 7 obligation to examine jurors as to their biases and so on and
16:44:31 8 so forth. No one was arguing. No one was presenting any
16:44:33 9 evidence. So I don't think the ruling should change. There's
16:44:35 10 no basis for that. There hasn't been any evidence, hasn't even
16:44:38 11 been one word of opening statement.

16:44:41 12 MR. POWELL: Your Honor, our position would be that
16:44:43 13 the jurors are now looking for that evidence. And if we don't
16:44:45 14 give it to them, we suffer.

16:44:47 15 THE COURT: Well, I don't think they're looking for
16:44:49 16 it. We're not going to take it up in opening statements. If
16:44:53 17 you want to file a short brief with the copy to the other side,
16:44:57 18 I'm going to allow them to respond to it. I will look at this
16:45:01 19 again.

16:45:03 20 MR. POWELL: Thank you, Your Honor. I appreciate it.
16:45:04 21 I'll hand up a copy. I would like to note for the record there
16:45:07 22 is Facebook confidential material. This is not a redacted
16:45:11 23 version. It is unredacted. We will file electronically,
16:45:15 24 appropriately, a redacted version this evening.

16:45:17 25 THE COURT: All right. That doesn't look very short

16:45:23 1 to me.

16:45:24 2 MR. POWELL: It's actually exhibits so you can see
16:45:25 3 all of the evidence, Your Honor.

16:45:26 4 THE COURT: Yeah. But I'm supposed to read the
16:45:27 5 exhibits. That factors into my definition of shortness.

16:45:32 6 MR. POWELL: The brief I think is 10 pages.

16:45:34 7 THE COURT: Well, that's not very short either.

16:45:37 8 MR. POWELL: Maybe you and I have different
16:45:39 9 definition of short, Your Honor. I apologize.

16:45:41 10 THE COURT: I have changed my perspective of short
16:45:43 11 since I moved around to this side of the bench. I will admit
16:45:46 12 that to you. And how long does the defendant need to respond?

16:45:52 13 MR. VAN NEST: He just handed this tonight,
16:45:55 14 Your Honor. I'm sure we can respond in two days.

16:45:56 15 THE COURT: Well, we'll take that back up in the
16:45:58 16 morning and, I mean, how long you really need. We'll talk
16:46:02 17 about that. Read this over.

16:46:04 18 MR. VAN NEST: Fine. Thank you.

16:46:05 19 THE COURT: Then we'll see where we are, and we'll do
16:46:06 20 that in the morning.

16:46:07 21 But it's out for opening statement, and if I need to
16:46:10 22 adjust witnesses if I change my previous ruling, we'll adjust
16:46:13 23 the witnesses and make it work.

16:46:16 24 MR. POWELL: Thank you, Your Honor.

16:46:16 25 THE COURT: Anything else we need to take up while I

16:46:18 1 have you-all?

16:46:19 2 MR. VAN NEST: Not for Defendants, Your Honor.

16:46:21 3 MR. POWELL: Nothing else for the plaintiffs,
16:46:22 4 Your Honor.

16:46:22 5 THE COURT: All right. Well, I appreciate the way
16:46:24 6 this afternoon went. I thought it went smoothly. I'm looking
16:46:27 7 forward to trying this case with you. So we are in recess
16:46:32 8 until nine o'clock in the morning.

16:46:34 9 If you need to get with me, you need to let my court
16:46:40 10 staff know, either Ms. Oakes or Ms. Baffes --

16:46:43 11 I think you have their e-mail addresses.

16:46:45 12 MR. VAN NEST: We do, Your Honor.

16:46:46 13 THE COURT: -- in time for me to be here. Try not to
16:46:48 14 wait until 7:30 to tell me you have something you want to take
16:46:52 15 up before nine o'clock.

16:46:54 16 MR. POWELL: Understood, Your Honor.

16:46:55 17 THE COURT: But I think we can go through this pretty
16:46:58 18 smoothly without any problems.

16:47:01 19 So, with that having been said, I look forward to
16:47:05 20 working with you, and we'll be in recess until nine o'clock in
16:47:08 21 the morning.

16:47:09 22 (End of transcript)

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1 **UNITED STATES DISTRICT COURT)**

2 **WESTERN DISTRICT OF TEXAS)**

3 I, Arlinda Rodriguez, Official Court Reporter, United
4 States District Court, Western District of Texas, do certify
5 that the foregoing is a correct transcript from the record of
6 proceedings in the above-entitled matter.

7 I certify that the transcript fees and format comply with
8 those prescribed by the Court and Judicial Conference of the
9 United States.

10 WITNESS MY OFFICIAL HAND this the 17th day of
11 September 2022.

12

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